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**State-Corporate Crime and Civil Society**  
**Impunity, Resistance and the Commodification of Victimhood in Ivory Coast**

MacManus, Thomas

*Awarding institution:*  
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**State-Corporate Crime and Civil Society:**

**Impunity, Resistance and the Commodification of Victimhood in Ivory Coast**

*Thomas MacManus*

**PhD Law**

For **Mum**, who instilled in me at a young age a belief that I could do anything I wanted.

For **Dad**, who taught me how to achieve anything I wanted.

For **my Wife**, who is everything I've wanted.

## **Acknowledgements**

I would like to thank everyone who helped me, pushed me and/or pulled me through this process.

I would especially like to thank the following people:

My Ivorian guide, Adjé Marcel.

Stéphanie Bürgenmeier, Alicia D'Ath, Fiona McAllister, Duncan McCann and Nicolas Raufast for their invaluable assistance.

The Law School, especially Dr Cian Murphy and Annette Lee, and my PhD cohort at Melbourne House for providing a truly supportive and stimulating academic environment.

My four sisters; Michelle, Jade, Nicola and Rebecca who helped me keep perspective. And Eleanor, who has always supported me.

And a welcome to Henry, Emmy and Molly who were not of this earth when I started this project.

A special thank you to Dr Kristian Lasslett.

Finally, and most importantly, I would like to thank my supervisor Prof Penny Green. This thesis wouldn't have been even remotely possible without the continued inspiration, support and guidance provided to me by Penny. And I will be forever grateful.

## **Abstract**

This thesis examines the specific criminogenic relationship between the state and corporation, and the state and civil society in the case of Trafigura's dumping of toxic waste in Abidjan, Ivory Coast in August 2006. Research undertaken in London and Abidjan reveals that the impunity that was enjoyed by the Ivory Coast state and Trafigura for this state-corporate crime was underpinned by the power of the corporation and by failures of both domestic and international civil society organisations that might have been expected to have labelled and challenged the crimes. Moreover, the thesis reveals that in the case of this particular example of state-corporate crime, civil society as an agency of censure and sanction played a distinctly retrogressive role. Here, in fact, state crime facilitated organised crime's insertion into civil society through a process I define as 'the commodification of victimhood' and, as a result, ensured that impunity was virtually guaranteed for corporation and government. The thesis also examines the failure of international and domestic legal measures to sanction the perpetrators. The thesis argues that a criminal state can act as a nexus for crimes by all three sectors of society, facilitating crime by actors in the state, the market and third spheres of society. Gramsci's notion of civil society as an arena of struggle provides a theoretical framework to assist in understanding the complex relationships between civil society, the Ivorian state and Trafigura. The findings presented here suggest that scholars of state corporate crime should adopt a more cautionary approach to civil society's capacity to label, censure and sanction than that suggested by Green and Ward (2004).

Have you built your ship of death, O have you?

O build your ship of death, for you will need it.

*The Ship of Death by D.H. Lawrence*

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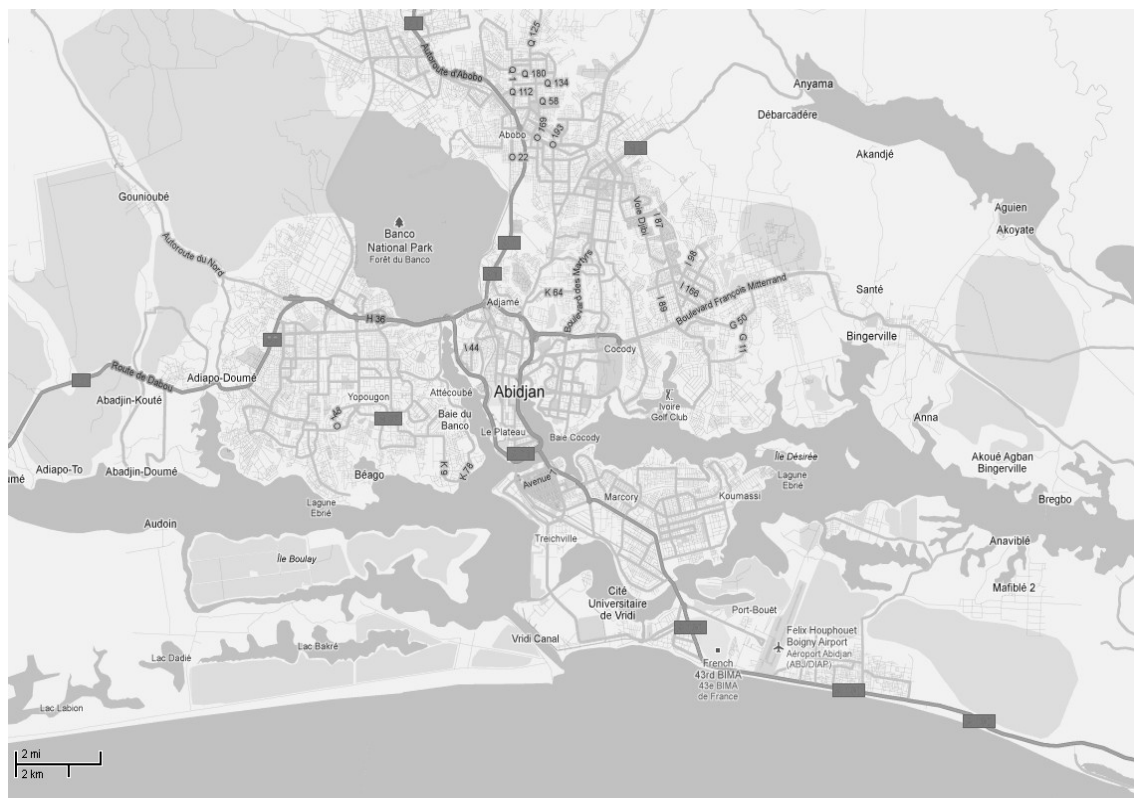
## Maps

(Source: Google Maps)

### West Africa



### Abidjan





## Acronyms

### Ivory Coast Non-Governmental Organisations (NGOs)

AI CI	Amnesty Intentional Côte d'Ivoire
APDH	Action pour la Protection des Droits de l'Homme
CEFCI	Centre Feminin pour la Democratie et les Droits Humains en Côte d'Ivoire
Club UA	Club Union Africaine Côte d'Ivoire
FIDHOP	La Fondation Ivoirienne pour les Droits de l'Homme et la Vie Politique
LIDHO	Ligue Ivoirienne des Droits de l'Homme
MIDH	Mouvement Ivoirien des Droits Humains
OFACI	Organisation des Femmes Actives de Côte d'Ivoire
RAIDH	Regroupement des Acteurs Ivoiriens des Driots Humains
WANEP	West African Network for Peacebuilding Côte d'Ivoire

### Ivory Coast Victims Organisations

CNVDT	Coordination Nationale des Victimes des Déchets Toxiques de Côte d'Ivoire
FAVIDET	Fédération des Associations de Victimes de Déchets Toxiques de Côte d'Ivoire
FENAVIDET	Fédération Nationale des Victimes des Déchets Toxiques de Côte d'Ivoire
RENADVIDET	Réseau National pour la Défense des Droits des Victimes des Déchets Toxiques
UVDTAB	Union des Victimes des Déchets Toxiques d'Abidjan et Banlieue
VUCAH	Victime Unies contre les Catastrophes Humaines

## Chapter 1 – Introduction

In the dead of night of Saturday, 19<sup>th</sup> August 2006 over one hundred gallons of toxic waste was dumped in sites around the coastal city of Abidjan, Ivory Coast. The next morning residents woke to a foul stench and many soon started to develop serious health problems. The source of the smell and the sickness was unknown and panic soon spread throughout the city. Rumours started to circulate that a large ship had brought waste to the city and that this was the source of the sickness. This ‘ship of death’, as it was to become known locally, departed swiftly with the assistance of the port authorities leaving locals unprepared to deal with the aftermath: 16 people dead and hundreds of thousands poisoned (UNHRC 2009).

The offending tanker ship, the *Probo Koala*, had been chartered by Trafigura – a large transnational commodities trader. The waste was the by-product of a widely banned chemical process undertaken by Trafigura and designed to produce cheap marketable oil from an even cheaper ‘unsellable’ oil product. The process was banned in Europe because of the hazardous nature of the waste. The company was well aware of this fact, as was revealed by leaked emails between the CEO and some of the commodities traders in London.<sup>1</sup> Trafigura had tried to offload the waste earlier in the journey, in Amsterdam and Lagos, but without success. The corporation ultimately engaged a company called Société Tommy (Tommy) to dump the waste in Abidjan. Since the dumping, the corporation has deployed a wide range of measures to deny, neutralise and cover-up its involvement in the poisoning and to date has encountered no significant sanction for its actions in Abidjan.

In 2007, the Ivorian government “locked up without charge Trafigura executives for five months until the firm agreed, without admitting liability, to pay [US]\$200m for a clean-up” (Leigh 2009a). This settlement immunised Trafigura from any prosecution by the Ivorian state (TCE 2009). The clean-up was apparently never completed (Tiembre et al 2009) and the money has reportedly since been squandered (Gonto 2010). Twelve hours after the payment, three Trafigura officials were freed from prison (NBC 2008). The lack of due legal process and the subsequent release of the captives after payment was made suggests that the detention of the Trafigura executives by the Ivorian state

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<sup>1</sup> EMAIL From: NA; To: LC, JMN; CC: JL, JT, FA, AH, GS, CD; Sent: Tue Dec 28 2005 15:11; Subject: Re: More High Sulphur from PMI.

was more like a high level ‘shake down’, or kidnap for ransom, than a legitimate formal legal sanction.

In 2008, Salomon Ugborugbo of Nigeria, director of Tommy, was arrested in Ivory Coast shortly after the incident (TCE 2009) and in October 2008 he received a 20-year sentence for ‘poisoning’. The prosecution had asked for a life sentence. Ivorian shipping agent Desire Kouao received a five-year sentence for ‘complicity’ in relation to the same charge (Reuters 2008). They were the only two people sentenced to jail for the dumping (NBC 2008; Leigh 2009; Greenpeace 2010). Five customs officials, the Abidjan port’s military commander and its maritime director were acquitted (NBC 2008) and, although two directors were detained, no representatives from Trafigura were ever charged in Ivory Coast (Reuters 2008).

In the Netherlands, Trafigura was fined €1 million in July 2010 for breaching Dutch criminal law (in relation to an environmental crime), European waste export environmental laws and of hiding the nature of the waste (Day 2010) but was acquitted on charges of forgery. The *Probo Koala*’s Ukrainian captain, Sergiy Chertov, received a five-month suspended sentence from the Dutch court for his role in the same violations (Times Live 2011).

In the UK, 29,614 victims of the dumping sued Trafigura in a civil case known as *Motto & Ors v Trafigura*, the largest personal injury claim ever filed in England and Wales (Dunt 2009). However, in September 2009, Trafigura reached a settlement agreement which included payment to 30,000 victims and their families of about £1,000 each (Leigh 2009c; Moore 2009). This settlement precluded any legal sanction for wrongdoing by Trafigura, as it ensured that the dumping was not considered by a law court. Furthermore, it included a statement by both parties denying the liability of Trafigura for the dumping as well as a confidentiality agreement which swears the claimants’ lawyers to secrecy (see Chapter 8 for further discussion of this case).

The deaths of 16 people and the injury of thousands of others (UNHRC 2009) as a result of the corporation’s actions did not attract to it significant legal, or other, sanctions in the UK (from where the dumping was directed), Ivory Coast (where the dumping took place) nor under any other jurisdiction – and it is argued that the company enjoyed some level of impunity. Borrowing from Green and Ward’s (2004)

and Ward's (2004) formulation of deviance, impunity is defined for the purposes of this thesis as: "a failure to apply significant sanctions, from the point of view of the criminal actor, to violations of rules that are accepted as a standard of behaviour by a social audience".

The level of impunity apparently enjoyed by Trafigura, in light of such a harmful crime, is curious, and raises fundamental questions relating not only to the deviant/criminal role of the corporation but also relating to the role of the Ivory Coast state in facilitating Trafigura's deviant practice, the nature of censure and sanction in cases of state-corporate offending and the response of domestic and international civil society. This thesis sets out to understand the legal, social and political processes through which a well publicised crime by a powerful corporation attracts impunity and explores the extent to which civil society organisations contribute to the effective definition, censure and sanctioning of state-corporate crime. These questions are considered with specific reference to the 2006 dumping of toxic waste in Ivory Coast by the global trading company Trafigura.

Two theoretical paradigms inform my analysis: state-corporate crime and the related concept of deviance, and Gramsci's conception of civil society. The conceptual preference for a criminological rather than a legal understanding of crime and deviance is informed by two reasons: firstly, it is beyond the scope of this thesis to determine the criminal legal liability of any corporation as only courts of law have the competence to (legalistically speaking) determine whether any law has been broken or if a crime has actually been committed. Furthermore, even when convictions are secured they may be open to contestation by those convicted or from within the justice system itself. Schwendinger and Schwendinger (1970) argue that any definition of crime along strictly legal lines restricts criminological investigations by impelling criminologists to ignore social harms that are not defined as crime by law, and Schwendinger and Schwendinger (1970) suggest a redefinition of crime to include human rights violations. Their (re)definition implies that a normative judgement can be made by social audiences who then label the perpetrator as 'criminal', without reference to legal definitions employed by a criminal justice system. Secondly, while the law sets and enforces social norms – through enacting laws in parliament and meting out punishment in courts – legal systems are not well placed to deal with organisational crimes (Alvesalo and

Whyte 2007; Hillyard and Tombs 2007). National and international criminal justice systems are ill equipped to deal with crimes of transnational corporations as they tend to fall ‘between laws’ (Michalowski and Kramer 1987). For example; international criminal law applies, in practice, only to individuals<sup>2</sup> and this thesis is concerned with organisational crimes. This deficiency in the law may not simply be an oversight and critical criminologists have long focused on “the power of privileged segments of society to define crime, and to support enforcement of laws in accord with their particular interests” (Friedrichs and Schwartz 2007). As a result, criminal law systems may avoid the prosecution of powerful organisations that perpetrate corporate and state-corporate crime. Criminology does not suffer the same aversion to thinking along organisational lines and Kauzlarich and Kramer (1998) argue that organisations should be considered as deviant actors for the purposes of criminological enquiry.

While it is acknowledged that deviance is a theoretically loaded term, it is not the purpose of this thesis to revisit the theory of symbolic interactionism which underpins the concept. Instead, following Green and Ward’s (2004) and Ward’s (2004) formulation of deviance as a breach of a social norm or standard of behaviour that is accepted by a social audience, this thesis seeks to survey how human rights organisations act as a social audience to interpret acts as violating standards of behaviour and are disposed to apply sanctions to the actors. The relevant norms are, in the main, legal rules – international and domestic criminal, human rights and environmental law; but the norms of social morality as interpreted by domestic and international human rights and ‘green’ (or environmental) organisations are also duly considered. The relevant sanctions include criminal and civil legal punishments and censure by civil society organisations through open letters, press releases, campaigns and reports that may damage the corporation’s domestic and international reputation.

Green and Ward’s (2004) modification of Kramer et al’s (2002) definition of state-corporate crime requires a deviant act that violates a human right(s) as a result of an interaction between states and corporations. While the presence or absence of a deviant label does not, in itself, impact on the nature of the act (Sykes 1978) as “... deviance is *not* a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an ‘offender’” (Becker 1963: 9), the circumstances of the act are not wholly independent of the reaction. The reaction of civil society as a

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<sup>2</sup> Rome Statute of the International Criminal Court, 17<sup>th</sup> July 1998.

social audience will be determined by the character of such violations and Downes and Rock argue that:

It is not simply the presence of deviance but its quality, scale and location which typically shape a reply ... It is only when it is inexplicable, disordering, harmful or threatening that a gross reaction can take place. (Downes and Rock 2003: 187)

It would therefore be expected that the scale of the dumping in Ivory Coast, along with the subsequent deaths, injuries and widespread environmental damage, would prompt a 'gross reaction' from social audiences. It is precisely the nature of this reaction that the present research sought to investigate.

Breaches of social norms are often the focus of the media and civil society organisations. Amnesty International, Human Rights Watch and Greenpeace aim, respectively, "to protect individuals wherever justice, fairness, freedom and truth are denied"<sup>3</sup> (Amnesty International), "investigate and expose human rights violations and hold abusers accountable"<sup>4</sup> (Human Rights Watch) and "tackle power ... by investigating, documenting and exposing the causes of environmental destruction"<sup>5</sup> (Greenpeace). In the absence of formal rules, or their enforcement, and in the absence of corresponding sanctions, breaches of informal rules may be censured and labelled as deviant by civil society organisations such as human rights and environmental NGOs or by investigative sections of the press. Gramsci's conceptualisation of civil society provides a useful tool for understanding and assessing the potential and limits of human rights orientated grass-roots organisations in defending people against criminal actions of the state and international corporations. Gramsci (1971) describes civil society as a site of rebellion, where a counter-hegemonic struggle against the excesses of the state and the market takes place (this idea is developed in Chapter 4). This theoretical approach also leads to an understanding of the very real limitations and ambiguities of civil society in contributing to the effective definition, censure and sanctioning of large scale state-corporate crimes.

The main studies of corporate deviance come under the overlapping subject headings of corporate crime and state-corporate crime. Corporate crime is committed by a

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<sup>3</sup> <http://www.amnesty.org.uk/content.asp?CategoryID=74> (accessed October 2011)

<sup>4</sup> <http://www.hrw.org/about> (accessed October 2011)

<sup>5</sup> <http://www.greenpeace.org.uk/about> (accessed October 2011)

corporation (or individual acting on behalf of the corporation) in furtherance of the organisation's goals (Erman and Lundman 1978; Coffee 1980; Braithwaite 1989). State-corporate crime is defined as deviant actions or omissions that cause human rights violations that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of the goals of one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution (Kramer et al 2002, as modified by Green and Ward 2004). This thesis is primarily concerned with state-corporate crime and the data collected during the course of this research revealed the significance of the state's interaction with the corporation in facilitating the crime and in ensuring impunity for the corporate perpetrator at a domestic legal level.

A reliance on strict legal definitions of crime has often meant that impunity for powerful crimes has been implicitly constructed as a failure of the law and its criminal justice processes as well as a lack of political will on the part of the domestic state and the international community of states. Recognising the limitations of that conception, Green and Ward (2004) introduced the notion of civil society as a powerful source of censure and sanction for deviant state and corporate behaviour (see also, McCulloch and Pickering 2005).

The decision in this thesis to concentrate on deviant behaviour, as opposed to behaviour recognised as criminal by the law, is a conscious one and the use of the term 'deviance' is complex and requires elaboration.

Edwin Lemert (1951) first argued that deviance from informal and formal rules, and from social norms, was actually a function of society's reaction to behaviour and the subsequent attachment of a deviant label to the actor. Following Lemert, Erikson (1962) wrote: "it is the audience which eventually determines whether or not an episode of behaviour or any class of episodes is labelled deviant" (Erikson 1962: 308). There is a weakness (or lack) of formal legal rules when it comes to crimes of corporations, especially when committed on a transnational level (and this is discussed further below). However, breaches of social norms often fall within the purview of civil society organisations and the media. In the absence of formal rules and corresponding sanctions, breaches of informal rules can be censured and labelled as deviant by civil society organisations such as human rights and environmental NGOs or by members of

the press. Becker (1963) argues that rules are a manifestation of social norms held by the majority of a society, whether formal or informal, and the enforcement of 'norms' starts with a social audience bringing any breach to the attention of the public (Becker 1963). When the formal norms of criminal law are not invoked, civil society can act as a social audience to bring wrongdoing to the public's attention. Furthermore, Green and Ward (2004) argue that civil society can act as a social audience for the purposes of censuring and sanctioning deviant acts.

### *Censure and Sanctions for Corporate Deviance*

This thesis critically engages with the impunity afforded one criminal corporate conglomerate, Trafigura, from the vantage point of both law and civil society and investigates the hypothesis that civil society could act as a censuring and sanctioning mechanism for the crime.

A case study of the dumping by Trafigura provides the opportunity to empirically test the significance of civil society in imparting regulation in the form of sanctions that were absent from the legal justice systems of the jurisdiction where the crime was directed from (London) and the jurisdiction where it occurred, its harmful effects were felt and the victims are located (Abidjan, Ivory Coast).

In reviewing the literature on corporate and state-corporate crime, it became clear that very little empirical research has been conducted into the mechanisms of impunity that operate around this class of criminality. This thesis sets out to investigate the reasons for the apparent failure to censure and punish Trafigura up to four years after the dumping and to explore in detail the workings embodied in the impunity process. Necessarily this involved an empirical study of the crime, the corporation, the Ivory Coast state, international NGOs and more particularly in light of Green and Ward's work, that section of Ivory Coast civil society which might have played a significant role in applying censure and sanction. This thesis thus aspires to contribute, albeit in a modest way, to the growing literature on state-corporate criminality and to further the current understanding of the means by which powerful entities are able to avoid censure and punishment.

The original aim of this research was to survey relevant civil society organisations in order to determine their capacity to apply sanctions. The data gathered in Ivory Coast



revealed that the ability of civil society organisations to resist the crime was severely limited by both internal and external factors and by the disproportionate power of the corporate entity. Furthermore, once fieldwork was underway, it became apparent that elements of civil society, or groups masquerading as members of civil society, were taking advantage of the general impunity afforded the corporation to exploit the victims of the dumping for financial gain, a crime that persists to this day. The implications of this discovery suggested a new emphasis in the direction of the research; civil society in Abidjan became a focus and a detailed study of the fundamental assumptions of the concept of civil society was required.

In order to better understand civil society's capacity to challenge impunity in cases of state-corporate crime, a Gramscian theoretical lens was applied to civil society actors in Abidjan and international NGOs in Europe. Gramsci's theory of civil society as an 'arena of struggle' (1971) provided a framework that illuminated paths to interpreting the data collected in London and on a field trip to Abidjan and in understanding the impunity afforded to Trafigura for the deviant act of dumping. A powerful counterbalance to struggles against impunity is denial, and Cohen's (2003) theory is employed throughout this thesis to explain some of tactics deployed to counter sanctions and censure efforts by civil society actors.

There have been a number of excellent literature reviews of corporate and state-corporate crime (see for example, Kramer et al 2002 or Lasslett 2012b) and the following section, rather than repeating this work, will focus instead on the literature that concerns itself with an apparent freedom for state-corporate crime to take place without significant forms of social control.

### *Controlling State-Corporate Crime*

The literature on state-corporate has grown apace in recent years (Tombs and Whyte 2002; Kauzlarich et al 2003; Kramer and Michalowski 2005; Lasslett 2010b) but very few scholars have explicitly attempted to explain in detail the ways in which freedom from censure and punishment has been granted to corporations. Instead, empirical studies have largely been preoccupied with explaining the factors that resulted in the crimes.

The primary focus of the empirical literature on state-corporate crime has been on three catalysts for action. The theory predicts that a combination of motivations with opportunity coupled with a lack of social control can result in state-corporate crime. The motivations can be understood simplistically in terms of pressure and goal attainment. Opportunity concerns the availability and attractiveness of illegitimate means. The third category, 'operationality of control', is concerned with the prevention of crime but does not engage with sanctions for criminal behaviour and crimes are studied under this heading in terms of a failure of social control mechanisms. Three early state-corporate crime studies illustrate the point well. Kramer's (1992) study of the *Challenger* space shuttle explosion outlined various failures of internal and external corporate and government controls which, had they been sufficiently robust, may have prevented the disaster. Similarly, Aulette and Michalowski (1993) point to a failure of local, regional and federal regulatory bodies in preventing a fire at the Imperial Food Products chicken processing plant in Hamlet, North Carolina. Matthews and Kauzlarich (2000) isolated the failure of the regulatory environment and a corporate culture of rule breaking in a study of the crash of ValuJet flight 592. It may not be surprising that control mechanisms were given peripheral treatment in light of Kramer's optimistic claims in relation to external controls:

Corporations ... are subject to the criminal justice system, a wide variety of regulatory agencies, the media, labor unions, consumer and environmental groups, and public opinion. While these external controls are generally quite weak and ineffective, their sheer numbers guarantee at least a modest measure of oversight. (Kramer 1992: 234)

However, ten years later, Kramer and his colleagues retreat a little from their reliance on formal mechanisms of social control for powerful crime and consider the fact that civil society actors could indeed be considered as agents of effective control:

The theory of state-corporate crime suggests that formal social control is but one, and perhaps the least effective, way to control organizational crime and deviance. Real control must grow from social movements, grass-root activities, a truly aggressive and inquisitive media, and most important, open and democratic participation in the political process. (Kramer et al 2002: 279)

An important way to understand state-corporate crime is advanced by the integrated theoretical model of state-corporate crime (Kauzlarich and Kramer 1998), which introduced six catalysts for action in the category of operationality of control on an institutional level of analysis: international reactions, political pressure, legal sanctions, media scrutiny, public opinion and social movements (Kauzlarich and Kramer 1998). The former three could be considered to be within the purview of the state. But the latter three are of interest to the study of civil society's capacity to act as agents of control: social movements, public opinion and media scrutiny are interrelated elements of civil society. Both social movements and the media contribute to public opinion in the struggle between civil society, the state and the market in formulating the dominant ideological hegemony. Kauzlarich and Kramer (1998) outline how these control mechanisms could operate at an institutional level and give a cursory account of the potentialities of social control by civil society actors:

... various forms of legal sanctions, both domestic and international, could be imposed by criminal justice or other governmental regulatory bodies. Domestic or international public opinion could pressure offending organisations, or citizen watchdog groups could exert social-control influence. (Kauzlarich and Kramer 1998: 151)

However, the model outlines these 'social control mechanisms' (Kauzlarich and Kramer 1998: 151) in terms of the prevention of crime and does not theorise in terms of sanctions for criminal or deviant behaviour. Kauzlarich and Kramer argue for these mechanisms to be deployed to *block* state-corporate crime:

A highly motivated organisation with easy access to illegal means of goal attainment may be blocked from committing an organizational crime by one or more of these social control mechanisms. (Kauzlarich and Kramer 1998: 151)

Despite the apparent relegation of civil society actors in the prevailing theories of state-corporate crime to preventative measures only, there have been glimpses in the literature of the role of civil society in sanctioning corporate behaviour. Tombs and Whyte (2007) focus on the regulation of safety crimes and highlight the importance of domestic and international protest and social movements in enforcing safety crime regulations against corporations, and criticise 'consensus' and 'capture' theories of regulation for marginalising these groups.

Walker and Whyte (2005) examine the accountability of private military companies (PMCs) in light of international and domestic laws, and with respect to the market. The advantage to a government of employing PMCs for military operations includes the deflection of unwanted media coverage. It is easier to avoid scrutiny when PMC personnel are killed, rather than members of the military forces. This alludes to an avenue of censure open to civil society that governments are keen to close. Walker and Whyte conclude that market accountability may be the prime mechanism for corporate governance for PMCs which “will reduce public scrutiny and the observance of human rights and humanity to optional contract terms” (Walker and Whyte 2005: 687). Instead of providing significant sanction and censure, market accountability therefore only serves to drive deviance underground and out of reach of civil society organisations.

Corporate crimes differ from the originally conceived white collar crimes (Sutherland 1949) in that they are *organisational* in nature and are committed in furtherance of corporate rather than individual goals (Clinard 1983). Growing out of Sutherland’s work, state crime and state-corporate crime form a natural extension of the organisational significance of these forms of criminality (Matthews and Kauzlarich 2007). The organisational nature of the corporation is a decisive factor in the impunity afforded to them by the criminal justice system.

### *Impunity Afforded by the Law*

Despite a reliance on legal instruments to define and control corporate offending, and the fact that “managers and corporations commit far more violence than any serial killer or criminal organization” (Punch 2000: 243), corporations have been committing crime with impunity for many years. As early as 1977, Conklin found that “there is little evidence that there has ever been a real effort to control business crime through criminal sanctions” (Conklin 1977: 136). By the end of the 1970s, criminal prosecutions of corporations in US courts were common but sentences were lenient (Orland 1980).

There are two divisive areas of criminology applied to corporations that, according to Matthews and Kauzlarich, “cut to the core of the field of criminology ... the unit of analysis and definition of crime” (2007: 46). Thus it is that both the very conceptualisation of crime and the organisational nature of state-corporate crime contribute to problems associated with the control of such offending.

Both concerns can be summed up by the phrase *actus non facit reum nisi mens sit rea*, which means ‘the act is not guilty unless the mind too is guilty’. From this well-established principle we get the two requisite legal elements of a crime: *mens rea*,<sup>6</sup> the mental element of the crime, which must usually contemporaneously coincide with the *actus reus*, the offending act. The *actus reus* is generally uncontroversial because it is much more easily located in the physical world. *Mens rea* is a more troublesome concept for the study of state-corporate crime and can only usefully be ascribed to individuals, and not organisations:

The primacy granted to notions of individual intent in criminal law, inscribed in the notion of *mens rea* (or ‘knowing mind’), essentially excludes organisations from the normal method of attributing criminal liability and makes it difficult to attribute the blame for individual acts or omissions in the context of organisations. (Alvesalo and Whyte 2007: 59)

The construction of the *mens rea* test, devised by the common law judiciary, ensures an enduring focus on the individual by all levels of the criminal justice system:

Investigators, prosecutors, judges and juries all struggle to ascribe liability to an organisational entity distinct from the intentions, actions and omissions of one or several concrete individuals. (Hillyard and Tombs 2007: 13)

The legal concept of *mens rea* is a major factor in attributing impunity for serious harm to organisations. The first US case of a corporation being tried for murder (reckless homicide), the Ford Pinto case, was a failure of the US criminal justice system to appreciate the organisational nature of the crime and Punch argues that, “companies then get away with ‘murder’ because the law and the courts are not geared to organizational deviance and corporate violence” (Punch 2000: 243). In the UK, a case against P&O for the *Herald of Free Enterprise* incident failed for similar reasons: “the judgement pointed to the difficulty in identifying a ‘corporate mind’ to explain the collapse of the case” (Punch 2000: 249).

The second heavily debated concept within criminology is the definition of crime. The study by Alvesalo and Whyte (2007) on safety crime reveals the connections between principles of criminal law and how crime is understood:

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<sup>6</sup> Crimes can also be couched in terms of omissions, or failures to act.

The fundamental precepts upon which criminal law is based have an important role in providing a conceptual framework for how safety crimes are widely perceived and understood. (Alvesalo and Whyte 2007: 59)

A brief analysis of the debate reveals two potential reasons for corporate criminal impunity. The corporate wrongdoing may not be against any law (and therefore not within the study of criminology when defined in the narrowest sense). Alternatively, the act has been criminalised but the organisational nature of the crime allows the deviant actor to escape prosecution (as well as escaping the scrutiny of traditional criminology which focuses on individual ‘street crime’). Therefore, harms caused by corporations have tended to be left out of the criminal law altogether and even if crimes are on the statute books or in the common-law precedents, they are neither properly investigated (Alvesalo and Whyte 2007) nor enforced (Tombs and Hillyard 2004).

Alternative theories for impunity have been put forward, and Punch outlines four main reasons for corporate impunity under the law: (1) difficulty linking decision-making processes to harmful consequences, (2) the preoccupation of the law with individuals, (3) the professionalism of the corporate executives and their legal team gives them ability to convince judges and juries of their point of view, and (4) the power of corporation (in terms of money and legal expertise) to negotiate; by bamboozling courts with huge amounts of information and the corporation’s position of power in any plea-bargaining negotiation – put more plainly, “organizational clout enables corporations to evade sanctioning for their organizational deviance” (Punch 2000: 273).

Many aspects of the toxic waste transport and dumping analysed by this thesis could be considered to be violations of law – whether administrative (document forgery), environmental (including violation of Regulation 5 of the Marpol Convention and Articles 6 and 13 of the Basel Convention; see Chapter 5 for more details) or criminal (for example, the UK’s Corporate Manslaughter and Corporate Homicide Act 2007). A further possible explanation for the impunity afforded to Trafigura lies in the international nature of the corporation and the transnational nature of the state-corporate crime, directed from London and committed in Ivory Coast. As already mentioned, Michalowski and Kramer (1987) argue that transnational corporations engage in crime that falls in ‘the space between laws’. The criminal legal system deploys various tactics to avoid the prosecution of transnational corporate harms and state crime. These can be

explained by the legal fiction of jurisdiction, an aspect of the international law principle of sovereignty (Lauterpacht 2011). Dutch prosecutors refused to investigate the crime as it lacked jurisdiction to pursue Trafigura for a crime committed in Africa (Greenpeace 2011). International criminal law, similar to treatment of crime by most domestic legal systems, only recognises the criminal liability of individuals, and corporations cannot be tried or sanctioned by the International Criminal Court (ICC) (Bantekas and Nash 2007). Former Ivorian president, Laurent Gbagbo, does not enjoy the same ‘technical’ immunity and has been transferred to the ICC, The Hague, Netherlands, for crimes against humanity committed between 28<sup>th</sup> November 2010 and May 2011 in many of the same neighbourhoods of Abidjan that experienced the toxic dumping as well as in the west of Ivory Coast.<sup>7</sup>

Critical criminologists have focused on “the power of privileged segments of society to define crime, and to support enforcement of laws in accord with their particular interests” (Friedrichs and Schwartz 2007). This has frustrated attempts to understand state-corporate crime in terms of state defined criminal law:

... corporate crime and state crime are obvious, heterogeneous categories of offence that remain largely marginal to dominant legal, policy, enforcement, and indeed academic, agendas, while at the same time creating widespread harm, not least amongst already relatively disadvantaged and powerless peoples. (Hillyard and Tombs 2007: 12)

The constraints of criminal law has led state crime scholars to question a reliance on law to define its parameters of study as to do so restricts its field of scientific inquiry (Sellin 1938). Widening of the definition of state crime, as Schwendinger and Schwendinger (1970) so controversially did in the early 1970s, has been derided as a ‘moral crusade’ by Cohen (1993). But despite the criticism, criminologists continue to theorise ways in which to scientifically embark on what can equally be understood as a ‘noble’ crusade. In *Beyond Criminology*, Hillyard et al (2004) proposed that criminologists move away from the study of crime altogether to a study of ‘social harm’ or zemiology. The ‘social harm’ approach is not adopted here, but it implies the abandonment of the neutral objectivity of the researcher who may act as an advocate for victims (Friedrichs and

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<sup>7</sup> Warrant Of Arrest For Laurent Koudou Gbagbo, No. ICC-02/11, 23<sup>rd</sup> November 2011.

Schwartz 2007). The fallacy of a purely objective approach is discussed further in Chapter 2.

### *A Capitalist Explanation of Impunity*

In 1949 Sutherland bemoaned the fact that:

The crimes of the lower class are handled by policemen, prosecutors, and judges, with penal sanctions in the form of fines, imprisonment, and death. The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors, and by administrative boards or commissions, with penal sanctions in the form of warnings, orders to cease and desist, occasionally the loss of a licence, and only in extreme cases by fines or prison sentences. (Sutherland 1949: 17)

Conklin (1977) echoed Sunderland's view of the role of the class system and noted that corporations were treated with leniency in the rare event of a conviction. The literature reveals that little has changed in the decades following this claim.

Academic sources reveal two particular features of capitalist society which heavily influence corporate crime and the freedom from censure it tends to enjoy. Firstly, capital accumulation acts as a driver of crime: "capitalism provides the major incentives for organizations to use illegitimate means to achieve profit" (Kauzlarich and Kramer 1998: 146). And secondly, it promotes impunity for the main actors in the market sector. Punch (1996) argues that fraud, for example, attracts stronger sanctions than corporate crime; one of the reason's being that it is "deemed to threaten the effective functioning of capitalism" (Alvesalo and Whyte 2007: 59). Therefore, it is not simply a matter of the goals that are promoted by the capitalist economic system, i.e. the requirement for profit maximisation, which drives state-corporate crime; it is the institutional relationship between corporations and the state, designed to protect the market, which plays a central role in ensuring that corporations are not unnecessarily constrained by law or other forms of regulatory control:

Obviously, state-corporate crime is driven by financial interests; however, it is also sustained by key political dynamics serving to resist criminal definitions that would otherwise designate its actions as wrong and unethical. As a result,



state-corporate crime persists because it is afforded impunity against prosecution. (Welch 2009: 352)

Impunity is in this sense embodied in the law even before the enforcement stage. Box (1987) argues that the ability of large corporations both to affect regulations and to evade the law may produce higher levels of small-business crime. This raises an interesting issue as initiatives by government to assuage calls for the control of corporate crime tend actually to be directed at low level offenders. Enforcement agencies tend to take the path of least resistance and balk at the idea of a 'complex' legal defence by tenacious barristers paid for by large firms with deep pockets (Croall 1989).

But it is not just at the legislation stage that corporations can influence the law. The state, to survive in a globalised capitalist system, cannot afford to discourage companies from investing. This clearly applies to Ivory Coast, and as can be seen in Chapter 3 the state went to great lengths to create an attractive atmosphere for foreign corporate investment. Chambliss puts it this way:

The accumulation of capital determines a nation's power, wealth, and survival today, as it did 300 years ago. The state must provide a climate and a set of international relations that facilitate this accumulation if it is to succeed. State officials will be judged in accordance with their ability to create these conditions. (Chambliss 1988: 202)

It is correct to say that "the deal between corporations and States is as old as business itself" (Rosemann 2005: 86) and Rosemann (2005) recounts Elizabeth Tudor's grant of legal immunity to Francis Drake during his explorations on *The Golden Hind* in 1580, the monarch being the largest shareholder in the expedition. Lenning and Brightman's (2009) study of Nigeria demonstrates the collusion between government and international corporations in the precipitation of crime, and the authors argue that:

Western-based oil companies such as Mobil-Exxon, Chevron, Texaco and Shell Petroleum Development Company (SPDC) have flocked to Nigeria, creating very volatile relationships between the government that profits from their presence and impoverished citizens, millions of whom live on less than \$1 US a day. (Lenning and Brightman 2009: 39)

Whyte, in similar vein, argues that capitalist regimes have had detrimental effects on African civil society:

The rampant march of neo-liberalism has inflicted a crippling anti-protection trade regime upon many African states. It has encouraged, through strategies of privatization, the fragmentation of civil society and has created a breeding ground for civil conflict and state repression. (Whyte 2003: 598)

The decision to explore civil society as a mechanism for sanctions is based on the apparent failure of legal definitions of crime to provide sanction to corporations. Green and Ward's work concerns the organisational nature of crime, and understands the futility of employing strict legal definitions that limit arenas of inquiry. Furthermore, the role of civil society is taken from the periphery and centrally located as a key analytical concept in the sanctioning and censure of state-corporate crime actors. This presents an attractive theory to understanding the mechanics of state-corporate crime and the possibilities of controlling it.

#### *Thesis Outline*

**Chapter 2** introduces and explains the nature of the research paradigm employed. Then, the process of choosing a relevant case study and its corresponding protocol is described. The chapter also explains how the empirical data was collected, including justifications for the choice of methodology and sources. This methodology orientated chapter includes a description of the challenges associated with undertaking research in Ivory Coast and analysing the resulting data.

**Chapter 3** provides a very brief description of the context in which the research was conducted and explains the establishment and evolution of the state of Ivory Coast. The discussion will also include an economic and political history of Ivory Coast: outlining the creation of a *laissez-faire* economy and providing an overview of the turbulent history of the political structure of the state.

**Chapter 4** introduces a Gramscian theoretical framework, employed to analyse the data collected in the field as well as primary documents and reports. Gramsci's articulation of civil society provides a useful tool for understanding and assessing the potential of human rights orientated grass-roots organisations in defending people against criminal

actions of the state and international corporations. It also assists in understanding the very real limitations and ambiguities of civil society in sanctioning large scale state-corporate crimes.

**Chapter 5** details the criminal narrative of Trafigura's dumping. It begins with the corporation's creation of the toxic waste and tracks the decision-making along the waste's journey to Ivory Coast and is primarily based on data drawn from a range of primary and secondary sources (including leaked documents released by *Wikileaks*). The link between this chapter and the one which follows is provided by the involvement of the Ivory Coast government. This West African state acted as a nexus in initiating the dumping crime and acting as a go-between with respect to the market and civil society sectors.

**Chapter 6** employs Lasslett's (2012) relational paradigm of resistance to gauge the capacity of domestic NGOs in Ivory Coast to resist state-corporate crime – and specifically the dumping as explored in Chapter 5. The analysis is based on interviews with a representative sample of the civil society sector in Ivory Coast concerned with human rights.

**Chapter 7** provides an analysis of the interaction between the Ivory Coast state and criminal organisations masquerading as local civil society organisations. Using primary data from the author's field trip to Ivory Coast, the chapter discusses the 'commodification of victimhood' and investigates how Trafigura's payoff to the government was used to organise criminogenic civil society NGOs; that is, victims organisations were created at the behest of the President of Ivory Coast without requisite care and due diligence as to their legitimacy to act in the best interests of victims. The chapter will further investigate why 'genuine' NGOs stood by while the state assisted, by way of a corrupt judiciary and lack of enforcement intervention, in the embezzlement of victims' funds.

**Chapter 8** provides an overview of the international reaction of global civil society to the crimes of Trafigura and the Ivorian state. This will involve a discussion of the international press' and international NGOs' treatment of the crimes. The chapter will discuss how the laws of the UK assisted, by way of a 'super-injunction', with an attempted corporate cover-up of the primary crime. Civil society's exposure of the

cover-up using the online tools of *Twitter* and *Wikileaks* is also discussed. The *Motto & Ors v Trafigura* civil class action is examined to determine its contribution to the censuring or sanctioning of Trafigura. The chapter will conclude with a discussion of how corporate power engages the legal system to overcome or debilitate the potential of international civil society to resist and control state crime.

**Chapter 9** presents the findings of the research and demonstrates that a new and worthy contribution to knowledge has been presented by the thesis, and outlines the modest contribution of the thesis to the relevant literature.

## **Chapter 2 – Researching Impunity and State-Corporate Crime in Ivory Coast**

### *Introduction*

The fieldwork for this thesis was conducted in London, UK and Abidjan, Ivory Coast during the summer and autumn of 2010. A second field trip to Abidjan was cancelled due to the onset of civil conflict over the contested elections at the end of that year. Empirical work in Ivory Coast was essential, if arduous, in order to properly understand the impact of the dumping incident on its victims and in turn the impact of the victims' movement on the perpetrator. The research in Abidjan was, however, to prove revelatory. Not only was the growth in victims organisations stemming from the dumping wholly unexpected (at least 120 such organisations were identified in the course of the research) but more confronting was the penetrating role of organised crime and government in the country's civil society sector. These facts would play a powerful role in explaining the nature and extent of impunity enjoyed by Trafigura.

As discussed in Chapter 1, the objective of this research was to understand the role of Ivory Coast civil society organisations in resisting, sanctioning and censuring the perpetrators of state-corporate crime. These crimes, when committed on a large scale, have the potential to cause widespread social harms and violations of human rights. Corporate organisations and states are widely involved in carrying out these deviant acts, often with a high degree of impunity. Welch (2009) argues that the persistence of state-corporate crime lies in its immunisation from prosecution. However, while few state-corporate crimes result in a criminal prosecution in the courts, Green and Ward (2004) propose that "the potential arises for civil society to impose informal sanctions (at the very least) on those agencies that are criminally responsible for so much human suffering and environmental degradation" (Green and Ward 2004: 51). This research project ultimately aimed to explore this potential in the specific case of Ivory Coast and the crime of toxic dumping; was civil society's potential realised in the sense that Green and Ward suggest, and what was the character of civil society's response? These objectives provided the basis for the choice of research methodology employed.

The theoretical lens being applied to the research is explained in detail elsewhere (in Chapter 4). For the purposes of choosing appropriate methods for the collection and analysis of data, a Gramscian notion of civil society, embodying the concept's fundamental contradictions, provided the most valuable framework from within which

to investigate the potential for civil society to influence, challenge and censure perpetrators of state-corporate crime.

Research questions are always limited by, “the particular ontological and epistemological perspectives that frame the research” (Mason 2006: 13). It is prudent that researchers should, at the outset, express any philosophical and theoretical assumptions “about the nature of knowledge (epistemology), and the nature of ways of studying phenomena (methodology)” (Rowlands 2005: 83). Of the two major research paradigms – quantitative and qualitative – the study of complex, multi-faceted state-corporate crime lends itself to a qualitative study.

The qualitative, or interpretivist, approach maintains that “the epistemological and ontological assumptions that the world and reality are interpreted by people in the context of historical and social practices ... [and] ... experience of the world is subjective” (Rowlands 2005: 83). This paradigm is underpinned by a recognition, “that people socially and symbolically construct their own organisational realities” (Berger and Luckman 1967) and in consequence we can study those realities through interview and observational methodologies. The flexibility of the qualitative paradigm also makes it particularly well suited to the study of large complex crimes with international dimensions on multiple levels of analysis.

Lasslett has argued that much of pre-existing scholarship on crimes of the powerful has been “dominated by an orthodoxy whose scientific method restricts the depths with which the crimes of the powerful can be plumbed” (Lasslett 2010b: 16). By this he is referring to the fallacy of objectivity. While the principal, but readily challenged, objection to a qualitative analysis is the inherent bias the researcher brings to data collection and analysis, Tombs and Whyte have argued that this ‘bias’ has real advantages for the research process: “... adopting a partisan objectivity often allows the researcher to recognise, and communicate to an audience, what hitherto was obscured or mystified” (2002: 231). Research will always entail researcher bias, which may be unavoidable, and “a lack of objectivity is a feature of all forms of research” (Tombs and Whyte 2002: 229). Researcher bias is best challenged by openly problematising the effects of this lack of objectivity and seeking mitigation (Lasslett 2010b); or as Tombs and Whyte argue, this problem may be largely overcome when researchers, “recognise, describe, and are open about the perspective from which their research commitments,

questions, and modes of analysis and dissemination originate” (Tombs and Whyte 2002: 230). In the present study, negative views of Trafigura and the Ivory Coast state did indeed colour my understanding of the research I was to conduct, both because of the crime and the subsequent cover up (in respect of the corporation) and the Ivory Coast state’s long history of authoritarianism and corruption. As with Lasslett, this recognition allowed me to approach data collection, and those I was studying, with a critical but open mind. I was acutely conscious of the necessity to preserve the integrity of the data if it was to be useful in the process of delivering justice to those who had become victims of the toxic waste dumping. My view of the state was not helped by an unpleasant experience at a checkpoint on *Pont General de Gualle* late on a Saturday night. I was given the choice of a trip to the local station or a 20,000 CFA fine (about €30), at gunpoint. I took the ‘fine’, and put it down to field trip expenses.

Data was collated using qualitative methods and was analysed through triangulation. Using mixed sources to triangulate and corroborate data suggests an integrated framework, in which method and data combine to account for a “specific part of ‘the picture’, or to provide views of ‘the picture’ from specified angles” (Mason 2006: 19, 20). While triangulation is the predominant argument for a mixed source approach, Mason (2006) looks beyond it from the standpoint of two ‘basic premises’, both of which are adopted in the current study:

social experience and lived realities are multi-dimensional ... [and that] ...  
social (and multi-dimensional) lives are lived, experienced and enacted  
simultaneously on macro and micro scales. (Mason 2006: 10, 12)

Data collection for the study pertained to each of the three levels of analysis outlined by Kramer (1992) in his seminal work on state-corporate crime (which can readily be accommodated within Mason’s macro and micro scales). Kramer’s integrated model is not applied in a strict sense here as the levels of analysis (individual, organisational and institutional) regularly intersect and it was thus considered more useful to present them as such. The model has proven to work well for case studies of organisations that are naturally contained within a national boundary (see Kramer’s (1992) article on the space shuttle *Challenger* explosion, for example) but how useful is it in the analysis of a large transnational corporation, with multiple organisational entities, branches and arms making up the whole, distributed across corporate offices in over 40 countries? While

agreeing that these integrated models “remain extremely useful analytical *topographies*” (Lasslett 2010), a case study that relies on this model alone tends to lose analytical value by trying to accommodate the multiple layers of analysis within the rather delimited categories of the model.

### *Choosing Research Methods*

Of Yin’s five major research methods for social sciences – survey, archival analysis, experiment, history and case study – only the flexible qualitatively-orientated case study was considered suitable for this study. The rationale for this decision relies on the fact that “... the case study’s unique strength is its ability to deal with a variety of evidence – documents, artefacts, interviews, and observations – beyond what might be available in a conventional historical study” (Yin 2009: 11).

A case study naturally fits with research that employs multiple triangulated sources, because the data derives largely from “documents, interviews, observation, and secondary analysis [of quantitative data]” (Schramm 1971: 12). Yin (2009) provides a useful, ‘twofold’, technical definition of case studies for social science, summarised as: (1) an empirical study that investigates contemporary phenomena in depth and in context, which (2) relies on triangulation of multiple sources of evidence.

The information sought from research into any case of large-scale, multinational, state-corporate crime is wide ranging and complex and it therefore lends itself to the case study method, which “... can afford to consider a large number of details, so as to consider their possible relation to a decision or a pattern of events” (Schramm 1971: 3).

### *Selecting a Case to Study*

Stake argues that a “case study is not a methodological choice but a choice of what is to be studied” (Stake 2005: 443). At the planning stage of this project, serious consideration was given to the problems that may be associated with the selection of a case study. With state-corporate crime, access is always the major difficulty. Why would an organisation, whose actions have been deemed criminal or deviant by the researcher, allow that same researcher easy access to its personnel and its documentation of internal communications? The same question may be asked of states, which are “likely to be even more tightly sealed from outside scrutiny where the aim is to investigate actual or possible illegality” (Tombs and Whyte 2002). Access to



information on internal decision making in large organisations was vital for this particular project, and indeed any case study, as “... the essence of a case study ... is that it tries to illuminate a decision or a set of decisions: why they were taken, how they were implemented, and with what result” (Schramm 1971: 6). Leaked internal documents and emails between Trafigura employees (including the CEO, traders, subsidiaries and the captain of the chartered *Probo Koala*) allowed for greater insight into the crime than would normally be expected. Timing is also crucial when choosing a case to study, as to arrive too early will narrow the amount of information available (leaked documents, court documents, governmental reports, etc.) but it was also necessary to avoid researching a case “... too late, when the early history has mellowed” (Schramm 1971: 8). The field trip for this case study was undertaken four years after the dumping and arriving any sooner would have meant that some of the most important data that the study unearthed might have been missed. Three months before the field trip, for example, compensation won in the United Kingdom for Ivory Coast victims was extorted by one of the victims organisations (Cheikna 2011). This development and the interviews it prompted were to be critical in the articulation of the organisational crime conceptual analysis that would contribute to my overall understanding of civil society in Abidjan.

The events of August 2006 in Abidjan, Ivory Coast act as a focal point or fulcrum for the case study. The main players involved in the event, most significantly Trafigura and the state of Ivory Coast, are examined to provide both context and detail to the analysis which follows. The apparent impunity enjoyed by Trafigura and the Ivorian state since the dumping is evidenced by the distinct lack of legal reaction or censure from the Ivorian state, foreign states or the international community (including NGOs).

The case study aims to shed light on this phenomenon by studying in depth the mechanisms through which impunity was both nurtured and propagated. The anatomy of the dumping incident – from the organisational decisions that led to it, through to the multiple consequences which reverberated from it – will be explored through interviews and documentary sources. In addition, data was also gathered to assess the potential for civil society to sanction and censure this type of crime through interviews in both London and on the field trip to Ivory Coast.

In order to inform the issues surrounding the event and to triangulate the primary data it was necessary to consult a variety of corroborating sources and these included: official documentation in the form of official and unofficial reports, journalistic accounts, internet-based resources, internal organisational artefacts, supplementary interviews, leaked data and personal observations. The following section deals with the strengths and weaknesses for each of these sources.

Reports from the UN (UNHRC 2009), WHO (2006), Ivory Coast<sup>8</sup> and Dutch governments (Hulshof 2006), NGOs (for example, Greenpeace 2009, 2010), and Trafigura (for example, Minton 2006) have proven invaluable in creating a picture of the event and its context. Data available on the dumping and its consequences took both official and unofficial forms and some were leaked (for example, the BBC legal defence to libel released by *Wikileaks*).

In order to mitigate bias, journalistic sources were restricted to mainstream media outlets and wire services. The British media have treated the subject with particular caution, due to the current libel laws and their aggressive application in the UK. As a result of this, many news reports were retracted from news media archives but are available elsewhere, through ‘megaleak’ sites and internet archiving sites.<sup>9</sup> The issue of libel laws in the UK and their effect on civil society’s ability to censure crime is examined elsewhere, in Chapter 8. The media of Norway, Finland, Germany and the Netherlands does not suffer the same level of restriction and reports by journalists at the Norwegian Broadcasting Corporation (NRK), *Helsingin Sanomat*, *Der Spiegel* and *de Volkskrant* have proved invaluable. International news wire services also provided a wealth of information relating to the dumping as well as updates on various aspects of the situation in Abidjan in general, the most important being Agence France-Presse (AFP), Associated Press (AP) and Reuters.

Governmental, corporate and NGO websites provided information from the point of view of the websites’ producers, and should be taken in that context and corroborated where possible. The reports of reputable organisations such as Greenpeace, Human Rights Watch (HRW) and Amnesty International (Amnesty) were also useful. Some

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<sup>8</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 41.

<sup>9</sup> For example: scribd.com, informationclearinghouse.info, wikileaks.org.

internet resources have insufficient information on which to judge their reliability (Zhang 2001) and great caution was taken to ensure the accuracy and validity of the sources that were to inform the analysis. Social media (*Twitter*, blogs and forums) are subjective sources but information can be gleaned from trends observed within this media and these online tools were particularly interesting from the point of view of censure by civil society (see Chapter 8 for further discussion of the impact of new forms of social media). Blogs by well-known or institutionally reliable authors (e.g. George Monbiot and the BBC's 'tweeter' in Ivory Coast) were also used. Search engines and even the notoriously unreliable Wikipedia were used as a first port of call only, for identifying quotes and historical facts but all information used in the thesis was verified by more reliable sources.

Data collection presents certain problems in Ivory Coast. Publicly available official information is sparse and there is no tradition of detailed record keeping akin to that of the British archives. Access to available official archives is granted by the Ivorian Ministry of the Interior and only upon application and full disclosure of information sought (Welch 1982). Nor has the internet yet been developed as a reliable and widespread source of public information. This absence of official records and a limited public domain meant fieldwork was essential to secure data.

Artefacts collected from participants on the fieldtrip included business cards, a victims organisation membership card, informational videos, brochures and posters. These items were not taken as sources of information so their accuracy was not a major concern. They were treated as raw data and helped enrich analysis. For example, to illustrate the competitive nature of Ivorian NGOs vying for recognition as the original and official victims organisation with some spending much of their time, energy and resources producing self-aggrandising legitimating promotional material.

### *Interviews and Direct Observation*

Interviews conducted to collect data for this study took three forms: informant, informal and focused.

'Informant' interviews were conducted in London and Abidjan in order to gain information, opinions and details of who to speak with when recruiting participants for the study (for example, the International Committee of the Red Cross (ICRC) mission in

Ivory Coast, NGOs and journalists in London and Ivory Coast, and law professors at the University of Cocody, Abidjan).

‘Informal’ interviews were conducted with groups of people the researcher fortuitously encountered. These interviews tended to be a little like informal focus groups with members of the public and victims of state-corporate crime. Interviews with victims in public spaces always attracted significant interest from other victims within the group, leading to what can only be described as ‘hectic’ information-gathering exercises. One way to manage these encounters was via the use of video recording so that film of the interviews could be played back later in the peace and quiet of the researcher’s study and subsequently be reinterpreted and analysed.

Most of the substantive interviews<sup>10</sup> were conducted during the autumn 2010 field trip. The focused interviews conducted were semi-structured. A set of questions, informed by the literature review and theoretical considerations, provided consistency across the interviews as well as presenting the opportunity to identify cross-sectional themes. By employing core questions across all NGO interviews an attempt was made to minimise bias and introduce consistency around the theme of organisational structure and function, and any responses to the dumping crime. In order to explore organisational particularities, in addition to the basic, core questions which were asked of all organisations, questions relating to the specific operations of individual NGOs were also asked. For example, when the issue of membership cards for members was raised, the issue was further explored with ad hoc questions. The fee attached to membership bought nothing for the victims but it lent a veneer of legitimacy (on the part of those running NGOs) to the NGO. Given that there was no discernible reason for victims to be members of these organisations (see Chapter 7) the very fact of the fee raised questions as to their role.

Data collected from individuals provides information about both the individual (behaviour, attitudes, perceptions) and the organisation (how and why it functions) (Yin 2009). It was particularly important in this study to bear this distinction in mind given that the case study question concerned organisational practice. Any distinctly individual behaviour, attitudes or perceptions needed to be identified as such and filtered out if appropriate; for example, one interviewee explained how another NGO did not have

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<sup>10</sup> See Appendix A for full questionnaire.

political ties, but when pressed on the matter it was revealed that this was an opinion based on a personal conversation that he had with the president of that NGO<sup>11</sup> (see Chapter 6).

The formal interviews were digitally-recorded, face-to-face interviews, and some were followed up by telephone or email to clarify details. Interviews were between 30 to 120 minutes in length and in some cases questionnaires were sent before meetings (if requested), or as a follow up. The interviews were primarily conducted at the private offices of the selected NGOs and victims organisations, and one interview was conducted at an event run by a victims organisation. These interviews were (in the main) conducted during work hours at participants' place of work in order to minimise disruption. Personal observations were also recorded at interviews and around their location. For example, UN police were observed at one victims organisation and a group of victims were observed and interviewed spontaneously when found waiting outside another.

Field procedures included the presentation of 'credentials', namely a King's College London (King's) business card (sometimes accompanied with a King's student card) and King's letters as set out below. Documentation from King's was used to give credence to the research when needed and helped inflate the standing of the researcher in the eyes of the participant.

Access to sites and subjects was, generally, relatively easy with one or two exceptions – such as the NGO, Action pour la Protection des Droits de l'Homme (APDH), which required a written request for meeting. Most organisations were happy to set up an interview with one or two days' notice and some were in fact conducted within hours of being organised by telephone. Aside from a visit to one quasi non-governmental human rights organisation, no government sources were directly recruited for interview. This decision was based on security issues, as detailed below.

The interviews were conducted in French. The researcher has some comprehension of French but given the complexities and sensitivities raised by the topic it was felt necessary to employ the services of a translator, who also acted as a facilitator. Very few subjects were confident enough to conduct the interview wholly in English. I approached the director of the English Department at the University of Cocody

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<sup>11</sup> Interview, Abidjan, September 2010 (MIDH 2010).

(Abidjan) who recommended a PhD student from the English Department to interpret during interviews for a modest fee. The interviews were also recorded which provided a means of validating the interpreter's translations once back in London. It was therefore possible to verify the quality of the translations given during interview. The interpreter was provided with a copy of the questions in English in advance, thereby increasing the confidence that at least the questions asked of the subjects were accurate, even if the translation of their answers was not. To ensure validity of the data collected by interview there was mutual agreement (with the interpreter) on definitions of words in questions, and any variability of translation was borne out in the analysis of the interview recording. The interpreter proved particularly valuable in explaining local culture and customs that might impact on the interview process in Ivory Coast. However, it became apparent early on in the field trip that the translator was not translating precisely. Concerned that this lack of precision would introduce inaccuracy into the study by the translator was for some time considered a problem. It was only when the recordings were played back and translated in London that it was recognised that the potential problem was in fact a bonus. The interpreter translated correctly but added valuable context to the data gathered. My translator added, expanded and defined the local idiom in his translations to me – all based on his cultural insights and from his own knowledge and experience of the crime and four years of aftermath. Instead of distorting the interview, he enriched it without compromising the perceptions of those he was translating. In the process of translation the translator therefore also contributed to an understanding of local context. Time was spent with a local family (introduced through contact in London) in the deprived neighbourhood of Yopougon and these visits gave valuable (if fleeting) insights into the culture and world outlook of the local population.

The use of a translator was also useful in securing local trust and perspectives. On one level this assisted in overcoming some of the misgivings held toward the researcher, as the translator provided a degree of authentication, both for the researcher and the researched. The translator assisted the researcher in gaining the trust of the interviewed by introducing and vouching for the identity of the researcher and simultaneously assisting the researcher in finding suitable candidates for interviews.

As the research included data collection on the government's involvement with Trafigura's criminal dumping, it was decided early on in the planning process to

maintain a low profile while in the jurisdiction. This decision was informed by information uncovered in preparatory research of the government's human rights records, specifically the treatment of foreign journalists investigating government deviance, as described in Chapter 7. A small 'non-tourist' hotel was chosen, avoiding the large business and tourist establishments,<sup>12</sup> and the researcher travelled on a tourist visa so as not to arouse unwanted attention from the government. Both these measures were taken to limit the researcher's exposure to government and corporate intelligence. Other covert practices employed included the clandestine recording of one participant on the field trip, and this was considered necessary by the non-transparent and defensive measures deployed by the interviewee. The decision to make this recording was not taken lightly – especially in light of the large, muscular man standing in the corner of the room for the duration, whom I took to be a bodyguard. However, the practice may be necessary at times and Green and Ward (2012) argue that, “when overt routes to knowledge are denied and secrecy characterises the practices to be studied, clandestine methods may offer the only route to enlightenment” (Green and Ward 2012: 735).

There is a long history of European involvement in West Africa, dating from the mid 15<sup>th</sup> century (Fyle 1981). From that point on there has been a strong French presence in Ivory Coast and attitudes to post-colonialism were taken into account. It was observed that participants were happier to be interviewed when informed by the facilitator that the researcher was not French. At times it was useful to say that the research was from a British university and at other times it was helpful to stress the researcher's Irish origins – this latter ploy was especially helpful with French and American journalists. Concerns about undercover journalists who would quote participants without permission were assuaged by King's branded PhD student business cards and by forms requiring signatures that had been designed to reach the standards of the researcher's UK University Ethics Sub-committee. A translator/escort and the use of local taxis as transport helped to cement the image of a non-threatening academic.

When investigating crimes of the powerful, taking an 'ethical orientation' approach (Scheper-Hughes 1992) makes the researcher directly accountable to the researched (Green and Ward 2011) and Marx reminds us that it's necessary that we aim not just to interpret, but to change the world (Marx 1845). The researcher is particularly

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<sup>12</sup> My translator was prompted to comment that I was probably the first person who had ever spent longer than four hours in the hotel. This may have explained the low rates charged.

susceptible to the morality of events under study, especially when in an ‘emergency zone’ where the researcher can be directly exposed to the struggle of people suffering from crime and conflict (Feldman 1995). By adopting a stance that shows “a commitment to justice and moral alignment with the victims of state violence and corruption, in pursuit of justice and change” (Green and Ward 2011), the researcher establishes a sense of accountability that may help facilitate access and trust amongst participants. On the basis of her work in Mozambique, Carolyn Nordstrom describes how research narratives often “... collide into contentious assemblages of partial truths, political fictions, personal foibles, military propaganda, and cultural lore” (Nordstrom 1995: 140). By adopting an ethical approach, conflicting narratives can be triangulated to gain a more complete picture of crimes and resistance movements. At all times, displaying a sympathetic attitude to the participant organisations’ mission and ethos allowed for greater access, as shared beliefs fostered an atmosphere of openness.

An application was made to and approved by the University’s Ethics Sub-committee. Ethical considerations included ensuring that the interview participants were giving freely informed consent to participate. Participants were presented with documentation that included an information sheet briefly outlining the project and a consent form that was in English but was translated to them by the interpreter prior to signing. Participants were informed that they were able to withdraw from the research verbally (directly to me) or by email/letter and that all relevant data would be deleted if requested/required, but none exercised this option.

Personal information relating to interview subjects was held on password protected electronic file and is anonymised in this thesis. All information will be kept for up to two years, stored under lock and key on a password encrypted hard drive at the researcher’s home address. All processing of personal information related to the study has been in full compliance with the UK Data Protection Act (1998).

Extra care was taken when informally interviewing victims to ensure that recounting the experience did not further traumatise them or put them at physical risk. The names of all direct victims have been withheld from the case study in order to protect their identity, privacy and security. At their request, some names of those interviewed at NGOs and victims organisations have been withheld.



NGOs were the primary subject of the field trip because they were seen to be at the vanguard of labelling and sanctioning deviant behaviour. Whereas in Europe, governments and NGOs, or similar civil society organisations, have a vast corporate-style internet presence, this was not the case in Ivory Coast. While many NGOs stated that they “have a site that needs updating”,<sup>13</sup> most are not readily available to the most popular search engines and if they are, contain little information. The internet was, however, to prove very useful, especially in the area of micro-blogging as discussed below.

### *Choosing Participant NGOs and Victims Organisations*

For the analytical purposes required by this research, civil society in Abidjan has been divided into pre-existing human rights NGOs and the newly formed Trafigura victims organisations.

The study population for the focused interviews was initially selected based on convenience of location and purposive sampling to include all relevant local human rights NGOs – that is, NGOs that should or would have investigated and reacted to the case being researched. Two field trips were originally considered, an exploratory one in September 2010 with an option to follow-up in January 2011, but civil war broke out soon after the first trip and the follow-up field trip became impossible. However, the information collected on the first trip provided enough data to draw meaningful conclusions from an analysis of that data and the contacts I developed in Abidjan continued to provide valuable information throughout the course of my research.<sup>14</sup>

The UN in Ivory Coast provided a full list of local NGOs that they had compiled and this list was confirmed and corroborated by ‘informant’ interviews with the ICRC and journalists as well as informally at the end of some of the ‘focused’ interviews. Participants were then identified through their organisation’s literature and websites and from the UN list, and were approached and recruited by email, telephone or letter. It was important that individual participants recruited had relevant knowledge of their own organisation or the areas covered by this research. As such, participants were members of the organisation’s legal department, or in positions which required a clear overview of all the NGO’s activities.

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<sup>13</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>14</sup> In particular, three international press correspondents and a number of Ivorian NGO heads.

In order to access the network of relevant NGOs in Ivory Coast, *Twitter* was employed to particularly good effect. A search with the ‘#abidjan’, ‘#ivorycoast’ and ‘#cotedivoire’ hashtags<sup>15</sup> was to uncover a BBC Correspondent based in Abidjan. This enabled contact and was followed by an invitation to his home for an informal fact-finding meeting. This meeting directly led to interviews with journalists from Reuters, Associated Press and France24. These were exploratory interviews, primarily fact-finding exercises to identify the relevant civil society players (presumed to be grassroots NGOs, or local chapters of international NGOs), and not designed to glean raw data. However, observations made by these journalists, their personal experience of the toxic dumping and their views on the personalities involved in the aftermath proved invaluable information. Similar interviews with staff at the Overseas Development Institute (ODI) (London), the UN and ICRC allowed me to identify ten human rights NGOs whose remit would cover the toxic waste events of 2006.

The NGOs surveyed can be split into the following four categories: domestic human rights organisations – APDH, LIDHO, MIDH and FIDHOP;<sup>16</sup> local chapters of international, regional and/or transnational organisations – Amnesty International, Ivory Coast (AI CI) and Club UA;<sup>17</sup> international or regional networks of associations – RAIDH and WANEP;<sup>18</sup> and other, less influential associations with human rights aspects to their stated mission – OFACI<sup>19</sup> and Transparency Justice.<sup>20</sup> These organisations as a group are representative of the relevant social audience for the violations of social norms by the state and by Trafigura. However, not all interviews were suitable for data analysis. AI CI did not engage with the incident, as they deferred to their parent organisation (the role of the International Secretariat of Amnesty International is considered in Chapter 8). RAIDH is an umbrella NGO, a federation of small human rights organisations and did not consider the dumping to be the kind of

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<sup>15</sup> “The # symbol, called a ‘hashtag’, is used to mark keywords or topics in a Tweet. It was created organically by Twitter users as a way to categorize messages” – Official Twitter explanation, available at <http://support.twitter.com/articles/49309-what-are-hashtags-symbols> (accessed December 2011)

<sup>16</sup> Action pour la Protection des Droits de l’Homme (APDH), Ligue Ivoirienne des Droits de l’Homme (LIDHO), Mouvement Ivoirien des Droits Humains (MIDH) and La Fondation Ivoirienne pour les Droits de l’Homme et la Vie Politique (FIDHOP).

<sup>17</sup> Amnesty International Côte d’Ivoire (AI CI) and Club Union Africaine Côte d’Ivoire (Club UA).

<sup>18</sup> Regroupement des Acteurs Ivoiriens des Droits Humains (RAIDH), an umbrella organisation that includes as its members APDH, Club UA, MIDH, Organisation des Femmes Actives de Côte d’Ivoire (OFACI) and West African Network for Peacebuilding Côte d’Ivoire (WANEP) – established in 2003 by five NGOs, including Club UA.

<sup>19</sup> Organisation des Femmes Actives de Côte d’Ivoire – focuses on the human rights of women.

<sup>20</sup> Concerned primarily with justice system reform.

incident within its remit: “we leave it to our members to act”.<sup>21</sup> Their membership includes APDH, MIDH and Club UA. WANEP are only concerned with peace building.<sup>22</sup> OFACI did not consider the dumping specifically a women’s issue and therefore not within their remit.<sup>23</sup> Transparency Justice are concerned with government transparency and, again, do not take on these type of cases. Chapter 6 therefore focuses primarily on the data collected from four organisations: APDH, MIDH, LIDHO and Club UA, identified as major ‘players’ in the human rights field in Ivory Coast at the salient time.<sup>24</sup> A fifth notable human rights NGO, FIDHOP, is a newer organisation established in 2009,<sup>25</sup> after the crime examined by this thesis. FIDHOP has not been involved with this crime on any level,<sup>26</sup> despite the ongoing harmful effects of the dumping. The validity of the selection was confirmed by the participant organisations, thus triangulating and thereby legitimising the results of the selection process. According to APDH, “there are three major NGOs for the defence of human rights – LIDHO, MIDH and APDH”.<sup>27</sup> MIDH stated that, “there are three major organisations that work in the defence of human rights, three major NGOs in Ivory Coast – MIDH, LIDHO and APDH”.<sup>28</sup> Unsurprisingly, when asked, FIDHOP included themselves in the list; “there are five NGOs: LIDHO, MIDH, APDH, Club UA and FIDHOP. These are the serious ones.”<sup>29</sup> Club UA see the main players in the field as LIDHO, MIDH, CEFCEI<sup>30</sup> and RAIDH.

Apart from these ‘major’ NGOs, APDH reported that there are between 20 and 25 specialised human rights NGOs fighting for the rights of women, children and the disabled. Club UA claimed they were “in permanent contact with about fifteen human rights NGOs”.<sup>31</sup> However according to a range of journalists, the relevant literature, and my own observations, the participant NGOs form the core of the domestic human rights organisations in Ivory Coast and may therefore be seen to be representative of the social audience under study here. The ancillary NGOs, in terms of size and focus, were not

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<sup>21</sup> Interview, Abidjan, September 2010 (RAIDH 2010).

<sup>22</sup> Interview, Abidjan, September 2010 (WANEP 2010).

<sup>23</sup> Interview, Abidjan, September 2010 (OFACI 2010).

<sup>24</sup> Interview, Abidjan, September 2010 (Comité International de la Croix-Rouge 2010).

<sup>25</sup> Interview, Abidjan, September 2010 (FIDHOP 2010).

<sup>26</sup> Ibid.

<sup>27</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>28</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>29</sup> Interview, Abidjan, September 2010 (FIDHOP 2010).

<sup>30</sup> Centre Feminin pour la Democratie et les Droits Humains en Côte d’Ivoire, an organisation focusing on women’s rights and established in 2003; source: website <http://www.cefci.org/>

<sup>31</sup> Interview, Abidjan, September 2010 (Club UA 2010).

chosen as participants and none have surfaced in the literature or media reports as having been involved with the dumping.

Individuals at the participant NGOs were all well placed to answer the questions posed: the president of the national executive of APDH,<sup>32</sup> the president of the MIDH,<sup>33</sup> the president of LIDHO<sup>34</sup> and the vice-secretary general of Club UA.<sup>35</sup>

However, while the NGOs interviewed were identified as the main human rights NGOs, only two reported that they were either ‘seized’ by the issue at that time or were involved in the foundation and organisation of victims organisations. As reported earlier 120 of these victims organisations were established, either organically or with the assistance of local NGOs, and they in turn organised into (at least) four larger, ‘umbrella’ federations. Upon hearing of these organisations, it was decided that they may be the civil society NGOs that this study should be concerned with and arrangements were made to interview them.

This study is concerned with six victims organisations or federations: Union des Victimes des Déchets Toxiques d’Abidjan et Banlieue (UVDTAB), Fédération Nationale des Victimes des Déchets Toxiques de Côte d’Ivoire (FENAVIDET), Réseau National pour la Défense des Droits des Victimes des Déchets Toxiques (RENADVIDET), Coordination Nationale des Victimes des Déchets Toxiques de Côte d’Ivoire (CNVDT), Fédération des Associations de Victimes de Déchets Toxiques de Côte d’Ivoire (FAVIDET) and Victimes Unies contre les Catastrophes Humaines (VUCAH).

Interviews were conducted with senior members of participant organisations including the founder president of UVDTAB, the president of CNVDT, the president of FAVIDET and the vice-president of FENAVIDET. Information regarding RENADVIDET and VUCAH (who were scheduled for interview during the aborted follow-up fieldtrip) was found instead in the reports of a range of journalists. Participant victims organisations were chosen with the help of local and international journalists,

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<sup>32</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>33</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>34</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>35</sup> Interview, Abidjan, September 2010 (Club UA 2010).

NGOs and by asking the organisations themselves. For example, CNVDT suggested that apart from UVDTAB, FAVIDET would be useful participants.<sup>36</sup>

Access to these victims organisations was more difficult. The problems associated with accessing this type of organisation raised subjective suspicions in the researcher's mind. The representatives of victims organisations were harder to meet than NGO representatives (taking weeks in some cases to respond and in others would only allow interviews with junior staff in the first instance), no recording was allowed at one, and was limited at another. These issues of restricted access raised questions about the nature of the organisations themselves. One of the four victims organisations approached for interview (CNVDT) was run by a former "high ranking"<sup>37</sup> member of FESCI, reportedly a mafia-type student organisation (HRW 2008: 99). These organisations generally had security personnel on their premises or in the room during interview. This was observed at one NGO too (FIDHOP) but was much more pronounced at the victims organisations. An explanation by CNVDT for this security presence is discussed in Chapter 7.

These victims organisations appeared to be extorting money from victims: exchanging promises of compensation from overseas or domestic civil damages cases, or from the government of Ivory Coast (although, no case or claim had been running). My research revealed that these victims organisations were offering an elaborate registration process for a fee and one group issued membership cards in an attempt to out-manoeuvre rival organisations in the 'battleground' for revenue or recognition. One organisation was keen to display an official government press certificate of authenticity to bolster claims of legitimacy; another simply 'muscle in' on victim-bound compensation, managing to convince an Ivorian court that he was the most 'official' victims organisation.

### *Conclusion*

The objective of this research project is to understand the functioning of international and Ivorian civil society and responses to state-corporate crime. The methodology employed was necessarily informed by this objective and are described by this chapter. The events of August 2006 in Abidjan formed the core of a case study of crime and effect. The specific objective of the Trafigura case study was to understand the

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<sup>36</sup> Interview, Abidjan, September 2010 (CNVDT-CI 2010).

<sup>37</sup> Email correspondence with international press correspondent, November 2011.

company's organisational decisions that resulted in state-corporate crime and the organisational processes that afforded NGOs the possibility to sanction and censure that crime. The impunity afforded to Trafigura in light of the evidence required explanation. As the research progressed, however, it became necessary to investigate and explain the continued and related deviance of the Ivory Coast state and Trafigura in compounding and extending the injuries of the victims. The results of the data collection and analysis, as will be seen, were unexpected but unsurprising.

The pre-reading can only get you so far in an attempt to unravel the complexities of Abidjan, and of Ivory Coast. The crucial factor for the field trip for this research was the engagement with the local and expat community in Deux Plateaux, Yopougon and other areas of Abidjan. Each encounter added another piece to the complex and murky puzzle. My translator was instrumental in this, showing me around and explaining his views of the realities of life in the city. Without a sense of context, it may not have been possible to realise that there was something fundamentally different about some of the victims organisations.

The time spent on the ground in Ivory Coast and the associated informant and informal interviews was essential to forming a picture of the crime and its aftermath. A second field trip, which was frustrated by war, would have been invaluable to explore avenues of further research that were revealed in the data analysis. And, based on the experiences of this field trip, a second would have undoubtedly opened up some more.

### **Chapter 3 – The Ivorian ‘Miracle’: Cocoa, Oil and War**

#### *Introduction*

Europeans flocked to Africa in the late 18<sup>th</sup> century, following Livingston’s call to deliver the three C’s – Commerce, Christianity and Civilisation. However, the French may have had a different motivation. Following humiliation in the Franco-Prussian war, France’s armies were seeking to restore some of their former prestige. But there was an overarching fourth ‘C’ – Conquest (Packenham 2003). The Ivory Coast is so-called because ivory was the only commodity the locals had that could entice marauding Europeans to trade with them (Fage 1980), and ‘coast’ because that was all that was relevant from the point of view of the European marauders, due to an inaccessible hinterland. Subsequently colonised by the French, and with close ties to the former colonial power after independence, the Ivory Coast became a show-case for African capitalist development – a picture of the stability and economic success of “the French experiment in West Africa” (Newbury 1960: 112). However, this success was economically unsustainable and was – moreover – built upon an abuse of power from the outset. This chapter charts the economic history of the Ivory Coast, aims to give a contextual background to the subject of this thesis and investigates how the state became susceptible to large-scale state-corporate crime.

#### *Basic Information*

The *de facto* capital of Ivory Coast (also known as Côte d’Ivoire) is Abidjan. It is the largest city, site of the financial centre and government, and is home to most foreign embassies (BBC 2011). The flag of Ivory Coast, based on the French flag, displays three equal vertical bands of orange (on the hoist side), white, and green (similar the Irish flag but shorter and with the colours in reverse order). Orange symbolises the Savannah in the north, green the forest in the South and white symbolises peace and unity. There are two state-owned television and radio stations, no private television stations and few private radio stations (BBC 2011). However, as far as the extent that ‘outside’ (non-government generated) information is available to the general public, satellite channels are available (for those able to afford it) as is the internet, but there are very few broadband subscribers (World Bank 2005).

Very little is known about prehistoric Ivory Coast but it is believed that there were settlements dating at least as far back as the Neolithic era (Chenorkian 1983). While in the past the coastal region – and potentially the whole territory – was likely to be sparsely populated (Fage 1980; Jones and Johnson 1980), today most of the population live along the coast, with the exception of Yamoussoukro, and 50% of the total population live in urbanisations (World Bank 2002).

The population is estimated at about 20 million, 40% of whom are under 14 years old. This population estimate is up from 18 million three years earlier and population growth is currently at about 2.44% (UN 2011). Africa has a population of about 965 million and a growth rate of about 2.46% (UN 2011). Life expectancy (at birth) is 56 years, higher than the sub-Saharan Africa average of 46, and the median age is 19 years. Some 75% of the population are ‘indigenous Ivoirians’ and about 20% of total population are migrant workers from Liberia, Burkina Faso (about 50%) and Guinea (Nation Master 2011). Of these migrant workers, approximately 70% are Muslim. About 3% of the permanent population are originally from further afield – including some 130,000 Lebanese and 14,000 French (1998 estimate); Lebanese migration to Ivory Coast had been ongoing in some form since the 1890s but really began in earnest during the prosperous 1920s (Bierwirth 1997; UN 2006).

*Table 1 – Predominant Ethnic Families and Groups in Ivory Coast*

<b>Family (1998 est. %)</b>	<b>Principal Group(s)</b>	<b>Origin</b>	<b>Current Region</b>
Akan (42%)	The Baoulé	Ghana	Atlantic East
Northern Mande (17%)	The Malinké	Guinea	North
Kru (or Krous) (11%)	The Bete	Liberia	Atlantic West
Voltaic (or Gur) (18%)	Senoufo and Lobi	Burkina Faso/Mali	North
Southern Mande (10%)	The Yacouba		West

[Sources: US DoS (2006: 1), Nation Master (2011), US DoS (2010: 1), Zolberg (1967), US CIA (2011)]

The predominant ethnic groups arrived in Ivory Coast within the last 500 years: the Kru from Liberia and the Senoufo and Lobi from Burkina Faso and Mali around 1600. In the



18<sup>th</sup> and 19<sup>th</sup> centuries respectively, two groups (the Agni, southeast; and the Baoulé, central) from the Akan family (from Ghana) and the Malinké (from Guinea) invaded/migrated into the territory. Most ethnic populations (outside the cities) are concentrated in regions that correspond to adjacent, bordering origin territories and the largest ethnic group in the country is the Baoulé (Zolberg 1967) – see Table 1.

French is the official language, and there are an estimated 60 native dialects – of which Dioula is the most widely spoken; illiteracy stands at about 50% and the average length of schooling is six years (UN 2006). In 2008, it was estimated that approximately 40% of the population were Muslim, 33% Christian and around 12% adhered to traditional belief systems.

Ivory Coast is in West Africa (at approx 8 00N, 5 00W) and is just over 320,000 square kilometres, practically square in shape, and borders the North Atlantic Ocean (515 km) to the south, Ghana (668 km) on the east and Liberia (716 km) and Guinea (610 km) to the west. The northern border is shared by Mali (532 km) and Burkina Faso (584 km). The landscape is predominantly flat except for some mountains in the west, with the highest point Monts Nimba at 1,750 metres.

## ***History***

### *Pre-Independence*

History records that the Ivory Coast was visited by European ships as early as the 1460s but it wasn't until 1637 that France landed missionaries at Assinie. Early contacts were limited mainly due to a notoriously inhospitable coastline and may also have been limited by settlers' "fear of the inhabitants" (US DoS 2010). According to Fage, the first account of Ivory Coast comes from Villault de Bellefond, who after his visit in 1667 remarked that, "its people ate Europeans, and wore less clothing than any other West Africans" (Fage 1980: 299). While most areas of West Africa involved colonial powers dealing with established local 'authorities', this was not the case of the coastal regions of Ivory Coast, "which also seems unique in that Europeans apparently neither saw nor were offered slaves there" (Fage 1980: 298). Fage argues that the lack of slave trading can be explained by a shortage of local kings which was a result of a sparse population, "and so with a lack of economic development and of trade organized to offer goods of interest to foreigners" (Fage 1980: 299). In 1843 and 1844, the French signed treaties

with the kings of the Grand Bassam and Assinie regions, placing their territories under a French protectorate, thus securing a monopoly for French traders along the coast. Naval bases and fortified ports were built at Assinie and Grand Bassam (Church 1967), but “they were not intended to serve as springboards for expansion inland” (Newbury 1969: 253). The French did not get involved with local politics and by the 1860s these trading posts were poorly situated, weakly defended and commercially unhealthy. Ivory Coast became a French colony in 1893 (BBC 2011). Captain Binger, as first governor, negotiated boundaries with Liberia and the Gold Coast in the early 1890s and set about “the primary task of establishing law and order along the rivers and trade routes from the coastal ports to the interior” (Newbury 1960: 112). By 1900, the budget of French Western Africa was about 24 million francs per annum, and in Ivory Coast up to 50% of revenue went on administrative services while “social services, health and education received 4.5%” (Newbury 1960: 123).

From 1904 Ivory Coast was ruled from Paris as part of the Federation of French West Africa (until the 1956 Overseas Reform Act) and by 1915, effective French control of the territory was achieved. The process, however, was not without conflict and was only secured following a ‘pacification’ period (Bierwirth 1997) which included a war with the Mandinka (from Ghana) and the Baoulé (a guerrilla war that continued until 1917). The French were considered experts at this type of pacification in the region at that time. E.D. Morel, the British journalist and anti-slavery campaigner, pointed to the French success in applying direct taxes without bloodshed in 1901; showing, “in her handling of native questions in the land of the true Negroes ... the superiority of France’s methods” (Morel 1902: 201). The French employed the mantra: “On gouverne de loin, mais on ne peut, de loin, que se borner a gouverner” (Newbury 1960: 112), which translates as ‘we govern from afar, but from afar, we can only limit ourselves to govern’. This made sense at the time, where the colony was acting economically independent from France, with most imports coming from Britain and Germany (Newbury 1960). This attitude changed as France became more economically entrenched (see Economy section below). Haute Volta, another French colony, was absorbed by Ivory Coast in 1933 in a bid to save money, and by 1934 the French managed successful military recruiting – another indication of the ‘superiority’ of French methods (Arnett 1935).

During World War II, France's Vichy regime maintained governance until 1943 when de Gaulle took control of all French West Africa. And right up to the end of WWII Ivorians were French 'subjects' without rights to citizenship or representation. The Ivorian Parti Democratique de la Côte d'Ivoire (PDCI) came to power after the war, as soon as political parties became legal. They lost a series of elections between 1949 and 1952, "but only because the French administration had tampered with the ballot" (Schachter 1961: 295). Some commentators argue that, from 1950, Ivory Coast became dominated by immigrants and "corrupt state leaders" (McMullin 2009: 84; Wannenburg 2005). Entering politics was seen as a means to criminal ends: "by capturing power, political figures gain control of a lucrative clandestine economic network" (ICG 2004: 4).

### *1958 to 1989*

In October 1958, Guinea became the first independent French-African state. De Gaulle violently cut ties with Guinea when it refused to join a 'French Community' in the region. There was however a route to independence while still retaining close ties to France (Le Vine 1997) and this was seized upon by Ivory Coast in December 1958, when it became an autonomous republic within the French Community and then an independent (in the strict legal sense of the word) state on Sunday, 7<sup>th</sup> August 1960. As with most other newly independent former French colonies, Ivory Coast adopted a 'French' approach to its constitution and legal system. Le Vine argues that this was inevitable as, "schooled in the French political tradition and habituated to French legal and institutional norms and forms, the African leaders were not likely to reject the political culture in which they themselves had been nurtured" (Le Vine 1986: 84). Perhaps the most sought-after element of the French system was a provision which allowed for "strongly centralized leadership and control" (Le Vine 1997: 85) – very much suiting the style of the first president Félix Houphouët-Boigny and his successors. Houphouët-Boigny had been a member of the French parliament before taking control of the newly independent African colony.

By 1960, the population of Ivory Coast was about 3.3 million (and growing at about 3.5%, including 1% from immigration) – with about 180,000 people in Abidjan. Half of GDP derived from agricultural activities and coffee and cocoa exports accounted for about 30% of GDP. Close ties with France ensured that it was the biggest market for

both exports and imports. Houphouët-Boigny ruled with a repressive, kleptocratic government for 30 years before his regime began to unravel. In 1983, the capital of Ivory Coast was moved to the then small village of Yamoussoukro, which was Houphouët-Boigny's home village. This was a bold statement of a self-important leader who would rule the country for 33 years, from independence in 1960 to his death in 1993, the longest serving leader in Africa (BBC 2011). Houphouët-Boigny ruled by terror and was prone to claiming false plots against him in order to imprison and torture anyone that he felt was not totally loyal to him. He also presided over the bloody repression of two revolts (DF 2003).

### *1990 to 1998*

In 1990, the government attempted to cut public service salaries but this was met with public uproar and “launched the biggest challenge to Houphouët-Boigny's rule since independence” (van de Walle 1991: 404):

In the streets themselves, popular resentment against the wealthy and the corrupt usually merged with anger over years of authoritarian rule. During an anti-government demonstration in Abidjan in March 1990, protestors chanted “Houphouet, voleur! Houphouet, demissionnez! Houphouet, corrompu!” (Harsch 1993: 44)

Adiko Niamkey, general secretary of the general workers' union (UGTCI), argued that the government should “repatriate the funds of those who have enriched themselves”, rather than tax salaries as recommended by the IMF (Harsch 1993: 44). This was the first sign of cracks in the government's regime, and was precipitated by the economic situation. In 1990, the teachers' union (Synares) demanded that “the immense fortunes illicitly acquired and stashed abroad should be brought back, and that personalities who obtained huge loans through state guarantees should be summoned to repay them as soon as possible” (Harsch 1993: 44). The riots were widespread and banks and shops were attacked as far north as the city of Bouaké (Harsch 1993).

After Houphouët-Boigny's death in 1993, Henri Konan Bédié (leader of the National Assembly) took over to serve the remainder of his term (as prescribed under the constitution). In the 1995 presidential elections, boycotted by opposition parties amid allegations of voter registration irregularities, Bédié won 96% of the vote. The

opposition parties did, however, participate in legislative elections later in 1995, which were again hampered by similar irregularities, and the PDCI retained control of the National Assembly which in 1998 issued constitutional amendments that further increased and centralised the power enshrined in the office of president. From 1960 to 1999 the PDCI held both the presidency and a majority of seats in the National Assembly (African Elections Database 2010).

### *1999 Coup and Aftermath*

On Christmas eve 1999, Ivory Coast experienced its first ('bloodless') military coup (US CIA 2011) ousting President Bédié (US DoS 2001). The coup is blamed, generally, on government corruption and incompetence. Retired Brigadier General Guéï formed a subsequent government and a new constitution was ratified in 2000 (US DoS 2010: 1), but this constitution still contained clauses which exacerbated national divisions between north and south, Christian and Muslim.

Presidential elections in October 2000 sparked violence and accusations of irregularities (US DoS 2007: 1). The Supreme Court (as handpicked by Guéï) excluded the PDCI and one of two main opposition political parties, the Rally for Republicans (RDR), and western election monitors were subsequently withdrawn. Despite gaining fewer votes, Guéï declared himself the winner. Supporters of presidential candidate Laurent Gbagbo, of the Ivorian Popular Front (FPI) took to the streets – joined by police and army – forcing Guéï to flee. The Supreme Court then declared Gbagbo president, with 53% of the vote. The RDR then began to protest as their candidate, Alassane Ouattara, had not been allowed to run for office. The new government suppressed the protest; hundreds were killed in the ensuing violence until Ouattara recognised Gbagbo as president and called for peace.

National Assembly elections in December 2000 were again dogged by violence and electoral irregularities, with most seats won by the FPI (about 40%) and PDCI (35%). Boycotted and violently disrupted by the RDR, turnout was about 33%.

Both elections in 2000 attracted allegations of severe human rights abuses at the hands of the government and a mass grave at Yopougon, western Abidjan, remains shrouded in mystery (Seyni 2001).

In January 2001, there was another coup attempt that proved to be a relatively minor incident and successful local elections were held peacefully a couple of months later. The RDR won a comfortable majority, ahead of the PDCI and FPI. In 2002, Ivory Coast had its first provincial elections, which again attracted accusations of electoral irregularities and in August, President Gbagbo formed a 'unity' government which included the RDR (BBC 2011).

In September 2002 exiled members of the military launched another coup attempt (US CIA 2011), which was said to include foreign fighters and support from the governments of Burkina Faso and Liberia (Gleditsch and Beardsley 2004: 380). This attempted coup evolved into a fully-fledged rebellion, splitting the country in two. The New Forces (NF) took control of the northernmost 60% of the country, while the government retained control of the populous southern territory. During the coup, General Guéï was killed and the government razed shantytowns, displacing about 12,000 people. In October 2002, the government and NF signed a ceasefire to be monitored by French military forces. However, in late November of that year, a new front developed in the conflict in western Ivory Coast. In January 2003, the Economic Community of West African States (ECOWAS) deployed 1,500 troops to assist the 4,000 strong French force in patrolling the 'zone of confidence', a kind of buffer/demilitarised zone that divided the country in two along an east-west axis.

#### *Linas-Marcoussis Accord*

In January 2003, the UN-monitored Linas-Marcoussis Accord was proposed by France and agreed – paving the way for power sharing between the government and the NF. Seydou Diarra, as chosen by the international community, was appointed Prime Minister by Gbagbo (US CIA 2011). In July, the National Armed Forces of Ivory Coast (FANCI) and the NF military agreed to work towards the Linas-Marcoussis Accord and disarmament.

The February 2004 United Nations Security Council (UNSC) resolution 1528 approved the UN operation in Ivory Coast (ONUCI) which involved the deployment of 6,000 troops, joining the French 'Operation Unicorn' force of 4,000. Deadlines and goals set by the 2004 Accra III Agreement – designed to implement Linas-Marcoussis – were not met by the parties and a deadlock had been reached. This was broken in November 2004

by the government when they launched bombing attacks on the north, including a raid on a French military installation – killing nine French soldiers. The French responded soon afterwards by destroying the Ivorian air force and taking over Abidjan (Nanga 2005) in a reaction which served as a reminder of the presence of the former colonial powers in the city. In November 2004, the UNSC agreed an arms embargo on Ivory Coast.<sup>38</sup>

### *Pretoria Agreements*

The 2005 Pretoria Agreements, brokered by South African president Thabo Mbeki, formally brought peace and put the Linas-Marcoussis Accord back on track. In October 2005, UNSC resolution 1633 extended the Linas-Marcoussis peace process for an additional 12 months and called for elections by the end of October 2006. In December 2005, the African Union (AU) designated Charles Konan Banny (governor of the West African Central Bank) as prime minister. In 2006, realising that elections couldn't take place in time to reach the agreements deadline, the UNSC passed resolution 1721 extending the mandates of Gbagbo and Banny until October 2007.

### *Ouagadougou Political Agreement*

In March 2007 Gbagbo and former NF leader Guillaume Soro signed the Ouagadougou Political Agreement in Burkina Faso. The agreement saw Soro become prime minister, mandated elections and the dismantling of the zone of confidence. By the end of 2008, about 90% of civil administration had returned to the north and some courts were back up, running and issuing birth certificates that were needed for voting in upcoming elections. Elections had been scheduled for November 2007 but were postponed to June 2008 and did not actually take place until the end of 2010 (Bah 2010).

### *Economy*

The Ivorian economy is based on a strong free market approach, and depends heavily on smallholder cash crop production – cocoa (with 40% of world supply, Ivory Coast is the largest producer in the world), coffee, pineapples, rubber and tropical woods. Agriculture employs about 70% of the population (International Labor Rights Forum, ILRF 2002). Another chief export is petroleum. This leaves the economy very sensitive

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<sup>38</sup> United Nations Security Council resolution 1572, adopted unanimously on 15<sup>th</sup> November 2004.

to commodity price fluctuation on the world market. The economy is also heavily influenced by the outside world, particularly by its former colonial power. Direct foreign investment accounts for about 45% of total capital in Ivorian firms and French investment accounts for 25% ownership of Ivorian companies and around 60% of all foreign investment capital. The stock of foreign direct investment was about US\$5.7 billion (28% of GDP) in 2007. France is the main investor; other significant investors are other EU member-states, Switzerland, Lebanon, China and India. The state is part of the West African Economic and Monetary Union (WAEMU), which uses the CFA franc. The French Central Bank retains all international reserves of WAEMU states and maintains a fixed rate of 655.956 CFA to the euro (US DoS 2010: 1).

Ivory Coast is an important source of oil and chocolate for France and the rest of Europe. The government have surrendered monetary policy to France and the majority of the population are at the mercy of the international commodities markets. Half of the country is foreign owned, a quarter by the French, and it is clear why commentators have labelled the Ivorian state as one “most often accused of elitist exploitation” (Clapham 1970: 8). By the 1970s Ivory Coast was widely renowned for its liberal economic policies and a policy based on free enterprise had “been consistently pursued since independence” (O’Connor 1972: 411). At that time Shaw and Grieve argued that Ivory Coast was an “emerging economic magnet ... for the US and other capitalist states” (Shaw and Grieve 1978: 3). Bartlett noted that Ivory Coast had long been considered “one of Africa’s success stories” (Bartlett 1990: 330). The legal structure ensured that the economy was attractive to private investment, whether from domestic or foreign sources (O’Connor 1972). Tax rates remained modest and so did the size of government (Bartlett 1990). These incentives for private capital ensured that Ivory Coast became “one of the most prosperous nations in Africa” (Bartlett 1990: 330). Honohan argued that cash crops were key to this success: “Côte d’Ivoire enjoyed enviable economic growth and diversification after independence, helped by the introduction of new cash crops” (Honohan 1993: 52). But this dependence may also have been part of the problem as these exports had little added value and, furthermore, profits were “more likely to be repatriated to France thanks to guaranteed convertibility, particularly when they are illicit and/or untaxed” (van de Walle 1991: 394). Commentators with foresight (see for example, O’Connor 1972), described Abidjan as an ‘island of prosperity’ created for the comfort of Europeans and that the country was



trading future prosperity and independence for rapid growth in the short term (O'Connor 1972).

So how did this 'Ivorian miracle' come about, and how was it shattered? Woods (2003) argues that the property rights regime was to blame. Land was freely (at next to no cost) available to locals and migrants alike. Whoever managed to produce something could lay claim to that land. However, declining incomes caused ethnic friction and as Woods explains, as "the over-exploited tropical forest approaches 100% depletion, 'natives' are more likely to resort to violence and discrimination against 'outsiders' to reclaim land" (Woods 2003: 463).

### *Early Years*

At colonisation, the only export was ivory (Jones and Johnson 1980) and, "[a]part from some evidence as late as the 1820s it is generally accepted that the Ivory Coast slave trade ceased by 1800" (Jones and Johnson 1980: 33). For the European powers in West Africa, business interests were paramount from the outset. And aside from any military ambitions, the ultimate goal of conquest was to bring civilised trade and commerce to the region to burgeon the home-state economy. Along the coast at Benin, the Porto Novo protectorate agreement (1863), Mellacourie treaties (1865-6) and the treaties ceding Cotonou in 1868 and 1878 "were all initiated by mercantile pressure on French authorities on the coast" (Hargreaves 1960: 103). It is undoubtedly true that, pandering to merchants, the French government built strongholds along the Ivory Coast coastline to protect trade. In the early 1870s Verdier of la Rochelle was trading at Grand Bassam and Assinie and voiced opposition to the proposed exchange with the British of the enclave for the Gambia, citing the economic potential of Ivory Coast. He was ignored by the new Third Republic's government but they soon became more sympathetic as French politics became more republican and increasingly controlled by business and professionals, of which representatives of African merchants formed "a tiny part" (Hargreaves 1960: 103).

By 1900, the economy was doing well and E.D. Morel noted that "the Ivory Coast is self-supporting" (Morel 1902: 198) – a situation unique for comparable colonies at that time. Bierwirth notes that the 1920s "were euphoric times ... a period that saw exports double in volume and quadruple in total value" (Bierwirth 1997: 325). Plantations were

established in the south in the 1920s and expanded in the 1930s, using forced labour (Hopkins 1976). Commodity prices were protected in the French market and Arnett notes that the “tariff preference of 1.80 francs per kilo on cocoa from the region, being of particular importance to Ivory Coast as exports rose from 16,000 tons in 1927 to 31,000 tons in 1934 – when Ivory Coast showed a surplus” (Arnett 1935: 436).

### *Post WWII*

Robinson (1951) argues that, post World War II, the extent of ‘western penetration’ in the Ivorian economy explained its success. A fifth of revenue from the eight French territories came from Ivory Coast in 1949, where political activity “of a more or less western variety is most marked” (Robinson 1951: 125).

Cash-crops continued to dominate the economy after WWII, and “the major effect of cash crop agriculture (cocoa, coffee) and its accompanying economic nexus was to make for fairly sharp divisions between different parts of the country, which coincided with distinct culture circles because these cash crops were spatially localised” (Zolberg 1967: 455). This led to “poorer and richer tribes” (Zolberg 1967: 455), a feature of colonial penetration, with ratios of 6:1 in income and 9:1 in proportion of children attending school between the richest and poorest areas of the country during the 1950s (Zolberg 1967).

From independence, Houphouët-Boigny was keen to maintain ties with France. This was assured by pegging the Ivorian currency to the French franc “and even retaining French administrators in the government” (Bartlett 1990: 330). Segal noted that negotiations by Ivory Coast with the European Economic Community in the early 1960s were conducted with “little or no concern for the possible repercussions on the economies of the non-associated African states” (Segal 1964: 77). Here, again, we glimpse an attitude of ‘elitist exploitation’. The economy experienced a “remarkable high rate of economic growth following independence in 1960, which was exceptional as compared with the growth rates of the other West African countries” (Haraguchi 1994: 79), and grew by an average of 8% GDP in the 1960s and 1970s (IFC 1985). But it must be noted that GDP may not be an accurate/suitable measure of the state’s wealth as many enterprises are under foreign ownership and there are no limits on the amount of finance expatriated by foreign or indigenous corporations. Despite a sharp fall in

coffee and cocoa prices in the 1970s – to which the economy is highly susceptible – growth remained strong in the late 1970s when compared to other (non-oil-producing) nations in the region (Honohan 1993). This allowed Ivory Coast to maintain an above average growth and by 1979 the country was the world's leading cocoa producer. The 'Miracle Ivoirien' continued through the 1970s and "[t]he main motivating factor of this miracle was rapid increases in cocoa and coffee production and export" (Haraguchi 1994: 79). However, there was a 'reversal in its fortunes' at the end of the decade and troubled times lay ahead (IFC 1985). The reversal of fortune may not have been immediately apparent, and "[f]ortuitous events, like the discovery of oil ... and the sharp appreciation of the US dollar in the early 1980s disguised the burgeoning crisis" (van de Walle 1991: 392).

### *1980s*

In February 1980, World Bank President Robert McNamara launched the structural adjustment loans, or SALs (Easterly 2005). The main features of IMF and World Bank SALs during the 1980s and 1990s were fiscal adjustment, price setting and trade liberalisation (World Bank 1981a, 1981b) dictated by a general, "movement towards free markets and away from state intervention" (Easterly 2005: 3). In 1981, the IMF made its first SAL to Ivory Coast in the amount US\$150 million; a second and third followed in 1983 and 1986, both in the amount US\$250 million (Haraguchi 1994). From 1982, the World Bank made similar loans available to states that already had IMF loans which were "designed to tide countries over until their balance of payments positions can be strengthened by changes in the structures of their economies" (Hodd 1987: 334).

Some of the conditions attached to SALs included harmonising energy and agriculture with world prices and the removal of protections on national industries. These loans would prove disastrous for Ivory Coast. Bruce Bartlett argues that any problems resulting from the SALs were as a result of "state encroachment into the private sector" (Bartlett 1990: 331) – unconvincingly citing the building of a large cathedral.

Throughout the 1980s government regulation of the economy remained modest by African standards and considerable privatisation had taken place (Bartlett 1990). By the end of the decade, Bartlett – incorrectly – argued that its economy "... is likely to

remain one of Africa's brighter lights" (Bartlett 1990: 331); however, Ivory Coast and other states in the CFA zone "continued to live beyond their means and accumulate debt" (van de Walle 1991: 392). By the end of the 1980s, "[t]he cocoa boom in Ivory Coast was reaching its structural limits" and since independence 10 million hectares of tropical forest had been destroyed (Woods 2003: 648). The bright light was starting to burn itself out. The deficit increased to 16% of GDP and debt (of about 14 billion dollars) was about 160% of GNP (van de Walle 1991). And "with as many as half the banks bankrupt and over a quarter of all loans defaulted upon" (van de Walle 1991: 392) the outlook was bleak. The Ivory Coast's liberal and open economic policies that had proved so promising over the years were coming back to haunt the country, as the "signs of economic disequilibrium were more pronounced in the Zone's richer countries which have more diversified economies and had had access to private capital" (van de Walle 1991: 392).

In 1989, the Ivorian government succumbed to World Bank demands and reduced the guaranteed prices offered to farmers by 50%, saving the government a third of its budget but resulting in "the sacrifice of the equivalent amount of cash income of around 500 thousand cocoa and coffee farmers" (Haraguchi 1994: 80) and local producers of cash crops suffered dramatically (van de Walle 1991). Cash crops had been generally bought up by the government, and this policy helped increase prices and output of coffee and cocoa by reducing taxes on farmers (Honohan 1993: 53). This guaranteed pricing system would have worked well in a market that is not susceptible to large price fluctuation, and did in fact work well for Ivory Coast for a few years – but world demand started to fall, precipitating a fall in cocoa prices throughout most of the 1980s (ILRF 2002), putting a severe burden on government coffers and pressure on CFA parity (Honohan 1993).

On top of these woes, the oil crises of the 1970s were still being felt, the US dollar rose, industrialised countries continued, and increased, protectionism of their domestic industries and in 1983 the cocoa crop (by then still the largest in the world) was damaged by "extraordinarily wide-ranging and destructive bush-fires" (Derrick 1984: 285) as a result of drought, which had the knock-on effect of causing power-cuts in the "great metropolis of Abidjan" (Derrick 1984: 285). By late 1980s growth had slowed and van de Walle argued that the "over-valuation of the franc is today in the process of

demolishing the production apparatus in these countries, resulting in a deep economic recession” (van de Walle 1991: 394). By the 1990s and the country started to run into severe debt problems (Bartlett 1990; Honohan 1993) and the state was “almost bankrupt” (Haraguchi 1994: 80). The population suffered from the recession too and the International Labor Rights Forum reports that from 1988 to 1995 the ‘incidence and intensity of poverty’ doubled from around 18% to around 36% (ILRF 2002).

### *1990s*

In 1994, the value of the CFA was halved, “thereby signalling the demise of the Franco-African preferential monetary and trading area known as la zone franc” (Martin 1995: 1). The rate had remained unchanged since 1948 and a devaluation had been demanded by the World Bank and the IMF since the end of the 1980s (Haraguchi 1994). The 1994 currency devaluation, as prescribed by the World Bank and IMF in order to make Ivory Coast’s exports more attractively priced, “significantly affected the poor as their savings and purchasing power dwindled overnight” (ILRF 2002: 8). The government too suffered as the devaluation increased the state’s debt burden (ILRF 2002). However, this devaluation and the contemporaneous structural adjustment measures, which allowed for increased aid flows, put – according to the IMF – “an end to the economic slump that had marred the Ivoirien economy for the previous eight years” (IMF 1996). The IMF had approved a SAL in the amount of US\$183 million in 1995 to support economic reform, the main thrust of which was privatisation, reduction of price controls and non-tariff barriers and a scaling down of state intervention in the cocoa and coffee sectors (IMF 1995). The IMF praised the progress being made by the structural reforms: “the privatization program made great strides in 1995, and there was considerable liberalization of the regulatory framework governing economic activity” (IMF 1996). In 1996, the IMF approved a third SAL for ‘enhanced’ structural adjustment which included a structural reform programme that called for “a major deepening and acceleration of structural reforms” (IMF 1996).

Bolstered by especially high international commodity prices and the currency devaluation the economy grew by about 6% per annum from 1994 to 1998. But it became necessary for Paris Club debt rescheduling in 1994 and 1998 (Paris Club 2011) and similarly with the London Club in 1998 (IMF 2006). By 1997, Ivory Coast was added to the IMF-World Bank list of heavily indebted countries (IMF 2006). Despite this fact, the loans continued.

In March 1998 the IMF approved another loan “to address the unfinished reform agenda”, which resulted in complete liberalisation of both the coffee and cocoa markets and “the sale of the state-owned bank BIAO was finalized in January 2000” (IMF 2000).

### *2000s*

After the attempted coup of 1999, economic aid was disrupted. Aid from the EU resumed in 2001 and the IMF re-engaged then too. But again, in 2002, crisis led to the cessation of foreign aid and arrears on international loans started to build up for the government. Paris Club loans needed restructuring again in 2002 (IMF 2006). By the time the World Bank, IMF and the African Development Bank resumed lending in 2007 per capita income continued to fall and had declined by about 15%. In 2009, the IMF lent Ivory Coast US\$565 million (IMF 2011). In 2009 both the Paris Club and London Club debt needed to be rescheduled once again (Paris Club 2011; IMF 2009).

Despite the apparent failure of the SAL project, the government continues to rely on an open economy and does not use tax, labour, environment, or health and safety laws to impede investment. In other words, the government may avoid enforcing the rule of law if in conflict with business interests. This is reflected in the illegal granting of a licence to Trafigura’s subsidiary (Puma Energy) and subcontractor (Tommy) in Ivory Coast as well as to the impunity afforded to the company when it contravened domestic environmental and criminal laws.

### *Today*

While oil has recently become Ivory Coast’s number one export, the liberalised, inefficient and corrupt cocoa market is still important and accounts for 40% of exports and 20% of government revenue. Furthermore, the state exports (gross) about 115,000 barrels of oil per day (2005 estimate) and sits on proven reserves of about 250 million barrels (US CIA 2011) – reserves that are estimated to last six years at that rate of extraction.

GDP (purchasing power parity) is about US\$38 billion. Public debt stands at about 65% of GDP and total exports stand at about US\$10.25 billion. The state’s export partners are: the Netherlands (14%), France (11%), US (8%), Germany (7%), Nigeria (7%) and

Ghana 5.5%. Imports are valued at US\$7 billion, with the main partners being Nigeria (21%), France (14%) and China (7%). External debt is estimated to be about US\$11.5 billion.

Ivory Coast's economy is predicted to grow 9% in 2012. It had shrunk about 6% in 2011, because of the civil war, and the IMF is set to loan the state a further US\$612 million, which will ensure that the country continues to suffer from indebtedness (Reuters 2011).

### ***Conclusion***

The transition of Ivory Coast from colonial outpost to a post-colonial 'economic magnet' to capitalist states (Shaw and Grieve 1978) based on liberal economic policies dictated by Bretton Woods institutions has, it is argued here, created a state where the population is susceptible to state crime, state-corporate crime and suffering on a wide scale. The move towards an open, 'globalised' economy was purposively perused by the government. Ngoran Niamen, the then Ivorian Minister of Finance, argued in 1999 that "[g]lobalization is a fact. Globalization has been imposed on us. Globalization is marching on. The issue is how do we march with it or how will we be left behind" (IMF 1999).

The International Labor Rights Forum argues that Ivory Coast is a "perfect example of a country where the socioeconomic situation deteriorated with the arrival of the World Bank and IMF ... [as Ivory Coast was] ... a relatively stable country and possessed the largest economy in the West Africa Monetary Union, until it began engagement with the World Bank and IMF in 1989" (ILRF 2002: 1). The structural adjustment programmes dictated by the World Bank and the IMF recommended accelerated privatisation, a reduction in government spending, liberalisation of the agricultural sector and severe currency devaluation.

The 'ill-advised' reforms resulted in the dismissal of around 10,000 public sector workers (Haraguchi 1994) and produced "devastating effects on the poor" (ILRF 2002: 3) and the International Labor Rights Forum reports that the consequences of the SALs for Ivory Coast included, "high economic instability ... increased agriculture poverty ... widespread child labor practices ... decline in the quality of education ... decline in the

quality of the national health system ... decrease in purchasing power of the poor ... [and] ... decrease in standard of living” (ILRF 2002: 2).

As revealed in Chapter 1, some commentators argue that corporate and state-corporate crimes persist because the neoliberal system provides incentives to employ illegitimate means for profit (Kauzlarich and Kramer 1998) and avoids sanctions which would threaten the effective functioning of the capitalist system (Punch 1996; Alvesalo and Whyte 2007). This chapter has outlined the historical and economic context in which the crime under study occurred, and draws out the prevailing economic policies of the state, setting the scene for the arrival of large international corporations to take advantage of an open economy with a corresponding regulatory environment.



## **Chapter 4 – Civil Society as an Arena of Struggle**

### *Introduction*

This thesis is concerned with the role of civil society in sanctioning the deviance of the perpetrators of state-corporate crime. Inadequacies in the application of criminal law and state inaction to bring justice to victims of state and state-corporate crime (Tombs and Whyte 2003) have presented civil society with the role of labelling and sanctioning the crimes. The deviance of an act is determined not merely by illegality under the criminal law of a state or the international community but also (and predominantly) by reference to social harm (Hillyard et al 2004) and violations of human rights as recognised by a social audience (Green and Ward 2004). The failure of criminal justice systems to deter and sanction the states and (importantly for the purposes of this thesis) corporations opens the way for civil society to do so, and Parker argues that “[i]f the law itself fails to recognise and protect substantive and procedural rights, then business will doubly fail to do so” (Parker 2007: 4).

Parker (2007) proposes that meta-regulatory law could recognise and empower corporate governance standards promoted by international NGOs and other non-state actors, and foresees a future where we could see, “international ‘networks’ of regulation in which state law, transnational voluntary codes, global civil society organisations and so on reinforce one another to regulate corporate conscience” (Parker 2007: 25). However, Parker acknowledges that this type of regime “generally only comes about through considerable struggle and conflict” (Parker 2007: 49). The ideal of an effective meta-regulatory regime has not yet come to pass. In the interim, the role of civil society organisations is becoming increasingly recognised, and the ability to censure and sanction state-corporate criminal behaviour is worthy of exploration.

The elements of civil society examined here include NGOs in Ivory Coast and ‘global’, or ‘foreign’ or ‘international’, NGOs – sometimes referred to as INGOs. In order to use the contested notion of civil society to understand the processes of sanctioning state-corporate crime, a working theoretical framework is first proposed.

### *Defining Civil Society*

Even as it is used as a social scientific term, ‘civil society’ lacks clear definition. The definitional uncertainties are further confused by an academic divergence between civil

society as a normative ambition and civil society as an empirical reality (Pearce 1997, 2000). Despite these issues, useful definitions and conceptualisations of civil society as a cultural phenomenon have emerged and have been developed through the literature.

While its origins are murky (Pelczynski 1984), the idea of ‘civil society’ as distinct from ‘political society’ is thought to have originated in 18<sup>th</sup>-century Enlightenment Europe in the work of Adam Ferguson (Edwards and Foley 2001). It was later developed by Hegel who also emphasised the state-civil society distinction (Hegel 1821). Hegel used the term ‘burgerliche Gesellschaft’ which can also be translated as ‘bourgeois society’ – a meaning famously adopted by Marx to describe a social class based on the ownership of private capital (Pelczynski 1984). The modern theory of civil society is attributed, in the main, to the work of Hegel as developed by Alexis de Tocqueville and Gramsci (Whaites 1998). The idea was ‘forgotten’ for some time but rediscovered by counter-hegemonic intellectuals in communist Eastern Europe (Lewis 2001), and in the 1970s and 1980s by social movements resisting dictatorships in South America and Central Europe (Trentmann 2003). These counter-dictatorship origins are retained in popular understandings of civil society, with Madison arguing that civil society is “everything that totalitarianism is not” (Madison 1998: 12).

The definition adopted here (below) derives from a concept of civil society introduced by Ferguson, developed by Hegel and then Marx, and crystallised by Gramsci. A parallel modern formulation of Hegel’s work was developed by de Tocqueville but he employs normative assumptions of civil society as an altruistic force for good (Mercer 2000). For Ferguson, civil society encompassed civilisation (meaning a departure from our natural state or ‘rudeness’) and the emerging modern standards of living as a result of specialisation; his main concern was that increased specialisation promoted an untenable diversification of interests that would lead to the fragmentation of society (Ferguson 1782). Both Ferguson and Hegel saw civil society as separate from and contrasted to the state, and Hegel argued that the solution to Ferguson’s problem of fragmentation was a modern, enlightened state (Edwards and Foley 2001).

Hegel’s philosophically original and ‘problematic’ (Pelczynski 1984) recognition of a ‘civil sphere’, as distinct from a political sphere (which regulated it) was criticised by Marx who sought to eliminate the theoretical distinction between civil society and the state. Marx reconceptualised the Hegelian idea of the primacy of the political sphere,

preferring to theorise civil society as the site of political discourse and change (Pelczynski 1984). Gramsci continued Marx's work, but reached different conclusions based on a Hegelian notion of civil society. According to Bobbio, "Gramsci does not derive his concept of civil society from Marx but is openly indebted to Hegel for it" (Bobbio 1987: 149). In Gramsci's view, "civil society was the site of rebellion against the orthodox as well as the construction of cultural and ideological hegemony" (Edwards 2006: 8); in other words, the struggle that is central to civil society allows lower or under classes to challenge the hegemony maintained by the ruling class as embodied in the state (Edwards and Foley 2001).

Whaites (2000) illustrates two visions of civil society: the Tocquevillean approach which centres on groups that organise around issues and not 'kin', and the view of Jean-François Bayart which is more wide-ranging in that it includes associations based on language and ethnicity. De Tocqueville's work is based on the premise that a strong state acts as a stimulus or catalyst to civil society. However, others contend that 'strong' and 'vocal' civil society can emerge in those states that fail to provide basic services. The weakness or strength of a state is not a function of its size, but of its independence from elite social groups, who can hold the state to ransom; as was the case in Nigeria, Brazil, the Philippines, and Thailand (Whaites 1998).

Mercer (2000) acknowledges an increasing trend in the voluminous literature on the subject towards conceptualising civil society (and by extension NGOs) through the theoretical lenses of Hegel, Marx and Gramsci. However, some scholars doubt the usefulness of the concept of civil society. This debate is today at a crucial juncture and some commentators (see for example Heinrich 2005, Edwards and Foley 2001) argue that the concept should be abandoned based on the multiplicity of views applied to civil society: "it would be difficult to claim that the concept represents a distinctive 'paradigm' for social scientific inquiry" (Edwards and Foley 2001: 5). While acknowledging the complexity, generalities and ambiguities presented by the notion of civil society, this study nonetheless finds a Gramscian model of civil society to hold considerable explanatory value for the study of state-corporate crime, as shall be seen as this thesis develops.

Van Rooy (1998) adopts a definition of civil society as, "the population of groups formed for collective purposes primarily outside of the state and marketplace", while

other commentators argue that it is the political space/sphere which is found between the state and the household or the family (Urry 1981; McIlwaine 1998). This latter conceptualisation implies that the market, or private enterprise, may exist in this political space and in this light Colás argues that Gramscian civil society is “associated with the capitalist market and the contest between hegemonic and counter-hegemonic forces that arise from this ‘private’ sphere of social relations” (Colás 2002: 10). Certainly the market, and specifically the illicit market, did enter Ivorian civil society but its penetration suggests not the eclectic or plural nature of that civil society but rather the weakness of that society. A more convincing interpretation of the Gramscian view of civil society entails “counter-hegemonic struggles against the market as well as the state” (Pearce 2000: 34).

For Gramsci, civil society is intertwined with his theory of hegemony (Buttigieg 1995) and is “the sphere where the dominated social groups may organize their opposition and where an alternative hegemony may be constructed” (Forgacs 1999: 420). Counter-hegemonic forces therefore contribute to the construction of an alternate hegemony. Hegemony, as refined by Gramsci (1971) in his *Prison Notebooks*, is the organisation of public consent, through the institutions of civil society, to the dominant ideology of the political and economic spheres. Parker’s (2007) meta-regulation provides a framework for the exercise of shifting concept of hegemony; which as ‘cultural, moral and ideological’ leadership (Forgacs 1999) is dynamic and, for Levy and Egan, hegemony “depends on an alignment of forces” (Levy and Egan 2003: 810). The first force is the power encompassed by the economic system (including production, taxation and sales). The second is organisational capacity (of corporations, the state and members of civil society). The third is the “discursive structure of culture, ideology, and symbolism that guides behaviour and lends legitimacy to particular organizations, practices, and distributions of resources” (Levy and Egan 2003: 810). From the point of view of civil society, the relationship between the second and third ‘forces’ is instructive; the organisational capacity of civil society organisations determines its ability to contribute to culture and ideology in order to ultimately guide behaviour, and:

Gramsci’s theoretical approach to understanding the process of social contestation can be extended to encompass multiple social actors competing for influence over the rules, institutions, norms, and policies that structure markets and economic relations. (Levy and Egan 2003: 824)

For Gramsci, the elements of civil society include:

Trade unions and other voluntary associations, as well as church organizations and political parties, when the latter are no part of the government, are all parts of civil society. (Forgacs 1999: 420)

NGOs as ‘voluntary associations’ of civil society are “part of the public domain of governance” (Tandon 1991: 12). And for Parker (2007), international NGOs and other non-state actors may someday complement state law in the regulation of corporate behaviour.

While Gramscian civil society is “the ideological arena in which hegemony is secured ... the relative autonomy of civil society turns the ideological realm into a key site of political contestation among rival social groups and ideas” (Levy and Egan 2003: 806). This concept of ‘contestation’ or of a ‘war of position’ is described by Gramsci using a military metaphor as he describes a battleground to challenge hegemony. The competing nature of the victims organisations observed on my field trip to Ivory Coast, and the discourse between Trafigura and global civil society, resonates with Gramsci’s theoretical understanding of civil society as a ‘battleground’ (Gramsci 1971; Hearn 2001). While civil society can be methodologically conceptualised as independent of political power, it has a symbiotic relationship with the government (Buttigieg 2005) and can access the political sphere. The constituents of civil society are ‘amphibious’ (Taylor 1990) – with the ability to operate politically when required. Civil society actors that do not take advantage of this political potential may limit their possibilities for resistance (Lasslett 2012a). The struggle can also move the other way, “with the state attempting to penetrate and control civil society” (Harvey 2002: 205). Gramsci argued for a strategic approach for counter-hegemonic activities:

avoid a futile frontal assault against entrenched adversaries; rather, the war of position constitutes a longer term strategy, coordinated across multiple bases of power, to gain influence in the cultural institutions of civil society, develop organizational capacity, and to win new allies. (Levy and Egan 2003: 807)

There is no generally accepted, ‘correct’ view of civil society but there is confusion between the term as a normative concept (i.e. what civil society ought to/aspires to be) and an empirical one (i.e. what it is) (Pearce 1997 and 2000). This study is, at once,

concerned with the variance between the normative and empirical descriptions of civil society in general, and in Ivory Coast in particular and with the way in which that variance played out in the reaction to a major state-corporate crime.

Edwards and Foley argue that, “as an analytical concept, the contemporary notion of civil society and the sectoral models to which it is attached (i.e. the state and the market) ... suffer from acute definitional fuzziness” (Edwards and Foley 2001: 4), which can be attributed to (inter alia) the treatment of civil society and the sectors as ideal, normative types. Civil society can be described neutrally as, “a sociological counterpart to the market in the economic sphere and to democracy in the political sphere” (White 1996: 178). However, some definitions assume an idealistic model of what civil society *ought* to be, in that it is expected to provide a bulwark – protecting people against the abuses and domination of the market and the state. Harvey argues that the various conceptualisations of civil society treat it “as much as a normative concept as an analytical tool” (Harvey 2002: 205). The problem with the confusion between the normative and empirical views lies in the assumption that civil society is always or necessarily ‘a force for good’ under the normative, idealised view; a confusion compounded by a misplaced fusion of visions of Tocquevillean and Gramscian civil society. Mercer (2000) is dismayed to find that there is no obvious distinction in the literature between commentators who adopt a Tocquevillean perspective (civil society is a ‘good’ and therefore all NGOs are ‘good things’) and those who adhere to a Gramscian one (civil society as a contested space). Harvey (2002) adopts White’s definition of civil society as an;

intermediate associational realm between state and family, populated by organisations enjoying some autonomy in relation to the state and formed voluntarily by members of society to protect their interests or values. (White 1996: 182)

The distinctiveness of this formulation, as Harvey points out, is that it is so wide as to include organised crime or death squads and does not make assumptions that civil society is always a “positive force for development” (Harvey 2002: 205). Furthermore, ‘some autonomy’ is not equivalent to “complete separation or independence” (Harvey 2002: 205) and Buttigieg argues that it is an “error of thinking that civil society is or can

ever be sealed off from political society and the economic sphere” (Buttigieg 2005: 45). Gramscian hegemony too rejects the idea of a definable schism between government and civil society and holds any distinction to be purely methodological (Buttigieg 2005).

### *Global Civil Society*

A general lack of literature outside the North American and Western European contexts means that comparisons between the North and South<sup>39</sup> are difficult; and this difficulty extends to the fashionable (but poorly problematised) concept of ‘global civil society’ (Edwards 2006). The term ‘global civil society’ has attracted the labels ‘fuzzy’ and ‘contested’ (Giddens 2001) or “an elusive metaphor which doesn’t make much sense empirically” (Kaldor et al 2004).

However, Cox (1993) argues for a ‘globally conceived civil society’ to link social classes within the constituent nations. And Tandon argues that “[t]he challenge to the power of multinational corporations ... necessitates strengthening international linkages across Civil Societies” (Tandon 1991: 13).

There are two liberal-cosmopolitan approaches to global civil society (Berry and Gabay 2009). First, it is that space between the family, the state and the market where action is undertaken for good on a transnational level (Berry and Gabay 2009; Naidoo 2003). This corresponds to a non-global Tocquevillean notion of civil society and suffers from the corresponding assumptions of civil society as a force for good. The second, Gramscian, approach outlines a global level beyond the concept of nation-states (Berry and Gabay 2009) and is involved in defining and redefining social orders (Colás 2002); but there is no inherent assumption of ‘good’ under this view. However, despite this, elements of such an assumption persist in the global society literature (Clark 1995).

### *NGOs as Organisations of Civil Society*

Civil society is primarily composed of organisations – such as religious institutions, charities, non-governmental organisations (NGOs and international non-governmental organisations, international NGOs) and a myriad of community groups – all of which are set up with overtly altruistic and moralistic ambitions. Anheier and Carlson describe the organisations that constitute the infrastructure of modern civil society as:

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<sup>39</sup> North and South are used here to refer to the developed and developing world.

voluntary associations, and non-governmental or non-profit organisations, social movements, networks and informal groups ... they are the vehicles and forums for social participation, 'voice' processes, the expression of values and preferences, and service provision. (Anheier and Carlson, undated)

The assumption embodied in the quote above, and often made by state crime scholars and others, that civil society organisations are inherently a 'force for good' is, this thesis argues, too simplistic and does not allow for explanations of the full complexity of civil society and NGO activity in Ivory Coast. Data collected for this study show that the civil society sphere can be 'hijacked' and that organisations operating in this space can be used as vehicles for the pursuit of goals differing from, and often to the detriment of, the organisation's stated intended beneficiaries. One of the key findings from this research is that a range of organisations, masquerading as civil society organisations, were in fact engaged in the exploitation of the victims of the dumping of toxic waste created and owned by Trafigura in August 2006. The corruption of civil society in Ivory Coast was further compounded and exacerbated both by Trafigura's and the Ivorian government's lack of transparency and accountability. At a global level, civil society fared better than its domestic Ivorian counterparts but the struggle to label Trafigura's actions as deviant by international NGOs was met by an effective cover-up operation by the corporation. This chapter aims to provide a theoretical framework which will facilitate a greater understanding of the modest successes and catastrophic failures of civil society in exposing the fatal crime of toxic waste dumping in Abidjan in August 2006.

The normative view of an inherently reformist civil society characterises the NGO literature (Clark 1995; Hearn 2007) and Fontana argues that "since the middle of the 1980s, the term civil society has been used as a kind of mantra and a panacea" (Fontana 2006: 1). NGO literature portrays NGOs and civil society in a generally unquestioned positive light but, as this thesis suggests, such a view obscures the ambiguous and countervailing impact that civil society organisations can have. As Mercer argues, "a more contextualized and less value-laden approach to the understanding of the political role of NGOs" is required (Mercer 2002: 5). This overarching assumption is widespread and some scholars even go as far as to crudely count up the number of NGOs in a given region and "predict a positive correlation between their density and the vitality of democracy" (Trentmann 2003: 5). Todaro and Smith, for example argue that NGOs are



often perceived to be more trustworthy and more credible than companies or governments (Todaro and Smith 2006).

The World Bank is a leading exponent of this perspective and has defined NGOs as “private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development” (World Bank 1989). This definition makes unjustifiably optimistic and value-laden assumptions of NGOs which this thesis argues cannot always be sustained. World Bank sentiment is often applied uncritically to the expanding cohort of domestic NGOs in Africa today (Lewis 2001).

Applying altruistic and optimistic characteristics to civil society actors and ignoring the possibility of self-serving, deviant and criminal actors provides a distorted concept. And as the findings of this research suggest, an assumption that civil society is inherently a force for good can lead to a hijacking of that assumed goodwill. In the 1970s, Filipino post-Marxists fetishised the idea of civil society and “glamorized a hypothetical ‘democratic space’ and electoral democracy” (San Juan 2009: 178), but without any substantive reforms. Beliefs in the inherent moral value of civil society are prevalent in the African context and Sesan argues that civil society in Africa has assumed the role of “custodian of the people’s hopes” for a better life (Sesan 2006: 5). Reading an inherent benevolence into civil society organisations and adopting an uncritical approach “can do more harm than good” (Whaites 1998: 130) as the potential for deviance is ignored. A lack of due diligence (at the least) by the state and assumptions made by victims about the nature of the victims organisations of Ivory Coast have led to the exploitation of these victims by deviant mafia-style organisations, which promised to work for the benefit of victims but are actually commodifying their victimhood for profit in the guise of civil society. From a Gramscian perspective, NGOs can be seen not only to challenge state incursions into civil life but also to reflect and illuminate the more fundamental struggles within capitalist society (Mercer 2000). When the toxic waste was dumped, the first reaction of many was to organise into victims organisations, of which there were to be hundreds (see Chapter 7). The deviant organisations amongst them used force, bribery and intimidation to profit from the victims’ suffering. This capturing of sections of civil society can only be understood in terms of the political and economic particularities of Ivory Coast, which is usefully described by Luckman (1996) as a *democradura* or illiberal democracy. While Ivorian governments are ostensibly

democratically elected, election results are normally fiercely contested by defeated parties and not infrequently result in civil war. In many ways Ivory Coast resembles a 'weak state', which allows for a larger political space between the state and the family. Organised crime "typically takes root and flourishes where the state is weak" (Sands 2007: 219) and will also seek to capitalise on the "vacuum created by an ineffective state" (Green and Ward 2004: 87). It is in this context that data was collected in Ivory Coast, to assess civil society's ability to fill that space and to resist state and state-corporate crime.

The propagation of victims organisations in Ivory Coast is reminiscent of 'civil society gridlock' (Blair 1997), which is not just confusion or disjointedness caused by the volume of civil society organisations but the process by which claims on the state for services and resources are multiplied, thereby actually contributing to further weakening an already weak state (Lewis 2001).

One of the functions of civil society is its capacity to "label state actions as deviant" (Green and Ward 2004: 4) in the absence of the state defining its own acts as criminal. Furthermore, a well developed civil society can be "a major constraint on state crime" (Green and Ward 2004). Green and Ward's (2004) definition of state crime is broad, and ranges "from trade unions to television channels to single-issue pressure groups to revolutionary movements". While it might be expected that the loudest voice for civil society in Ivory Coast, with regard to human rights abuses, would be the local community of human rights NGOs (along with local branch offices of international NGOs) and trade unions, significant questions were raised by the data collected in Ivory Coast in relation to the suitability and capacity of these types of civil society organisations to constrain or sanction of state-crime.

In developing and post-conflict countries, civil society is often associated with the proliferation of NGOs (Howell et al 2006) and the idea of NGOs as the manifestation of civil society is not a novel one. The World Bank usually sees civil society solely as, "the new professionalized service and advocacy groups" (Edwards and Foley 2001: 4) – that is, NGOs – and does not subscribe to a wider definition that would include unions, community groups or non-profit organisations. Mohan (2002) also argues simply that civil society is composed of NGOs. NGOs have been growing in number throughout the

world, and have experienced a 2,000% growth in numbers from 1964 to 1998 (Malhotra 2000). The 1980s and 1990s saw a particularly rapid rise in the number of NGOs, which can be attributed to the ascendancy of neoliberalism and the corresponding reduction of the state (Malhotra 2000). Structural adjustment programmes (SAPs) in this period required drastic cuts in education and health spending, which provided encouragement for NGOs to substitute for government activities (Whaites 1998). In June 2011, 3,337 NGOs were registered with consultative status at the United Nations – up nearly 50% from 2003 (Todaro and Smith 2006). Forty-eight of these were based in Ivory Coast.

There are two primary ways to categorise NGOs. First, by the type of activity or project they pursue, more specifically by orientation: “welfare, development, advocacy, development education, networking and research”. And second, by the level on which they operate, including local, national, and international (Vakil 1997). But as Vakil (1997) readily admits, an NGO may have several orientations and to categorise NGOs by level of operation may also be an overly simplistic formulation. Many African NGOs have links beyond Africa (Lewis 2001) and horizontal, transnational links imply that NGOs do not challenge the state ‘from below’ but are instead ‘contemporaries’ of a wide range of civil society and political institutions (Ferguson 1998). But the fact that many domestic NGOs remain grassroots organisations, despite international funding (see Chapter 6 for details of human rights NGO funding in Ivory Coast), is suggestive that despite transitional network links, they may still be forms of resistance to the state from below. However, without supporting data, it cannot be assumed that all NGOs will challenge the hegemony of the prevailing state. Further assumptions made about NGOs by commentators include: independence, trustworthiness and credibility, and the ability to assist weak or corrupt states to function (Todaro and Smith 2006). A good example of the respect in the literature for NGOs based on these assumptions can be seen in the work of Lawrence and Nezhad (2009) who argue that NGOs can, amongst other things;

better address the needs of the community it is serving ... can often bring innovative techniques and solutions to regions in need ... provide public goods to sections of the population that might be socially excluded ... the preservation of common property such as forests and rivers ... teach sustainability techniques to people who would otherwise have limited incentive to conserve. They can act as an advocate of those who would otherwise not be heard within their own nation. (Lawrence and Nezhad 2009: 76)

This final point is important from the point of view of a counter-hegemonic struggle against the world-view of the perpetrators of state-corporate crime and NGOs. In Ivory Coast, human rights NGOs were expected to react to the abuses associated with the dumping and to provide the voice of victims of the dumping so that their views and experience of the event would become part of the social discourse.

NGOs in Africa have particular strengths which Shastri (2008) outlines as: strong link with grass roots, empirical expertise, innovative ability, democratic work culture, cost effectiveness and long term commitment. But the literature is not wholly uncritical and weaknesses include: lack of experienced manpower, limited financial assistance, focus on short range objectives, political influence, legal obligations, high rate of growth in number of NGOs and a high corruption rate (Shastri 2008; Lawrence and Nezhad 2009). The rate of corruption is particularly important for this study. The data collected shows that the Ivorian victims organisations set up in response to the dumping are involved in corrupt practices in pursuance of organisations and individual goals. The developing critique of NGOs in the literature identifies four main themes: a neoliberal orientation; relationships between INGOs and domestic NGOs; relationship with the state; and limited theory and research focused on NGOs (Pearce 2000). It is worth exploring each of these thematics in some detail to better understand the NGOs surveyed in this thesis.

### *NGOs and Neoliberalism*

NGOs commonly advance a neoliberal idea that the responsibility and solutions to social problems lie within the private and civil society spheres, leaving the poor with self-exploitation (or self-help) as the only option to meet their needs (Petras 1997). This approach is based on a theoretical misconception that a separation of political and civil society exists (Forgacs 2000):

[I]t is asserted that economic activity belongs to civil society, and that the state, must not intervene to regulate it. But since in actual reality civil society and state are one and the same, it must be clear that laissez-faire too is a form of state 'regulation', introduced and maintained by legislative and coercive means. (Forgacs 2000: 210)

This takes us back to a Gramscian formulation: civil society + political society = the state (Gramsci 1970). However, it is questionable whether civil society, “has a global affinity with peace, democracy, and human rights, or is it yet another Western disguise for promoting individualism and market capitalism by other means?” (Trentmann 2003: 6). Even without an overt neoliberal agenda, there is a risk that civil society is perceived as, “a tool for the promotion of democracy, the market economy or capitalism” (Harvey 1998: 205). Civil society organisations will therefore be, “assumed to be independent from the state and a fundamentally positive force” (Harvey 1998: 204). Harvey’s critique is aptly illustrated in Ivory Coast where all human rights NGOs interviewed in Abidjan were at one time or another funded by the National Endowment for Democracy (NED), a staunch proponent and promoter of the neoliberal agenda.

### *International NGOs and Southern NGOs*

Global civil society institutions operate within a North-South resource transfer paradigm (Malhotra 2000), with funding being the basis of the relationships between International NGOs and their domestic NGOs partners. However, since the 1990s, the UN, states and even NGOs in the developing world have questioned the legitimacy of ‘northern’ NGOs to represent the interests of poor people in the developed world (Howell et al 2006). Commins, writing about northern NGOs, argues that there has been a backlash against them in which they are characterised as “useful fig-leaves to cover government inaction or indifference to human suffering” (Commins 1999: 71). Holloway (1999) reiterates the point, “[t]he word on the street in the South is that NGOs are charlatans racking up large salaries ... and many air-conditioned offices” (in Pearce 2000: 21) and some NGOs in Africa appear to be motivated by profit (Christy 1996). While there is debate about the relationship between northern and southern NGOs, the interdependent nature of these networked NGOs may not be conducive to viewing the entities as truly separate (Mohan 2002; Bebbington 2004). There are links between domestic groups and regional and global organisations (for example, the local chapters of Amnesty International and Club African Union in Ivory Coast receive financial and technical support from their parent organisations<sup>40</sup>) but the majority of Ivorian human rights NGOs are independent from other organisations and are, in fact, completely isolated from what can be called transnational civil society. This isolation also limits

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<sup>40</sup> Interview, Abidjan, September 2010 (Club UA 2010).

their capacity to resist state-corporate crimes through organised regional and international networks.

During the 1990s, the idea of an African civil society was often subject to enthusiastic debate in African politics and those debating tended to define it rather too narrowly and idealistically (Orvis 2001). As a result, the debate did not portray African civil society accurately:

African civil society is more rooted in and representative of African society as a whole than the pessimists have admitted, but also less internally democratic and less likely to support liberal democracy than the optimists assert. (Orvis 2001: 17)

The African NGO sector is characterised by external financial dependence and an external orientation (Hearn 2007), and this ‘pessimistic’ view is borne out by data collected from human rights NGOs in Ivory Coast.

#### *NGOs and the State*<sup>41</sup>

NGOs may not be non-governmental at all (Petras 1997), as a considerable number receive funds from overseas governments to which they are ultimately accountable. This can create conflicting interests between the NGOs and the communities that they are supposed to serve. Contingencies attached to funding can limit services to a narrow range of the community, or section thereof, without being accountable to that community. NGO work is generally project based, without any commitment to social movements (Petras 1997). The result of the scramble for donor money can make NGOs more accountable to the donors than to those they were constituted to assist, and could even imply support for economic liberalisation (Hulme and Edwards 1992). Of the NGOs surveyed in Ivory Coast, all were funded to some extent by foreign states (including Canada, Denmark, Germany, Switzerland and the USA). In the struggle between civil society and the state, there is competition for donor funds and African NGOs are often taken under government control (Sesan 2006). In Ivory Coast, it was reported during interviews that the government had set up its own NGOs precisely in order to secure international donor funds. Hearn (2001) argues that African civil society

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<sup>41</sup> The ‘state’ here refers to both the local domestic state and the international donor state.

as an ‘autonomous social force’ is a spurious assumption, and may be an assumption that any working definition should avoid.

### *Theory and Research (or Lack Thereof) of NGOs*

There is a ‘rather selective geography’ (Mercer 2002) of the empirical literature on NGOs and civil society. And those most frequently referred to include: Brazil, Chile and the Philippines followed less frequently by Bangladesh, India and Kenya, with less literature again on South Africa and Thailand (Mercer 2002). This restricted knowledge base restricts the literature to the experiences of only a few countries, with a limited number of NGOs. Furthermore this literature could promote normative ideals against which the performance of NGOs in other countries would be measured, completely out of context.

### *Conclusion*

Under a Gramscian formulation, civil society is a sphere of society “where an alternative hegemony may be constructed” (Forgacs 2000: 420). Human rights NGOs are obvious candidates for the constituents of civil society in the state-corporate crime context given their potential to label corporate and state actions as deviant and their potential to apply sanctions to those deviant actors. Human rights NGOs and victims organisations in Ivory Coast might have been expected to propose an alternative to the discourse of the state and Trafigura following the toxic waste dumping and were chosen as participants for this study. However, as the data analysed in Chapter 7 revealed, “to regard [the oppressed, the marginalized, and the voiceless] as tantamount to civil society can only result in a false understanding of the complex dynamics of power relations within, among, and across States” (Buttigieg 2005: 35).

The Gramscian distinction between the two major superstructural levels of society – the state and civil society – is not organic but methodological. Therefore, while the distinction may be analytically beneficial, it does not reflect the reality of the overlap between the state and civil society institutions (Forgacs 1999). Bearing this limitation in mind, this chapter aimed to synthesise the relevant criminological and development studies literature in order to come to a broad working definition of civil society. This definition has both empirical and theoretical aspects and can be summarised as follows: (1) the space between the state and the family, distinct from the market (White 1996); and (2) a Gramscian battleground in which a struggle against the dominance of the state

and the market takes place as well as the space in which members of civil society vie for position (Gramsci 1971). The empirical element of the definition assisted in locating participants for a case-study while the Gramscian framework allows for a theoretical grounded analysis of data collected in the field as well as primary documents and reports.

This chapter examined the Ivorian institutions of civil society, and specifically NGOs, to provide context to the data collected and highlight the distinctiveness of the local NGOs. In addition to the economic and political difficulties faced by Ivorian NGOs, which are common themes for African NGOs; the Ivorian NGOs are particularly reticent to working with each other and suffer from an isolationist attitude:

There is no genuine collaboration. In other countries, when governments take a decision and civil society does not agree with the decision, they resist collectively. But in Ivory Coast, this is not the case.<sup>42</sup>

Furthermore, NGOs did not assist victims of the dumping in any significant way. This was a calculated stance and was taken in order to avoid any association with corrupt, government-backed victims organisations – an issue discussed in further detail in Chapter 7.

This chapter proposes that the most appropriate theoretical approach to civil society – based on fieldwork in Ivory Coast and London – is the Gramscian formulation as adopted by leading state crime scholars (Green and Ward 2004). Gramsci's articulation of civil society provides a useful tool for understanding and assessing the potential of human rights orientated grass-roots organisations in defending people against criminal actions of the state and international corporations. It also assists in understanding the very real limitations and ambiguities of civil society in sanctioning large scale state-corporate crimes. This study focuses on voluntary organisations, in the form of INGOs, NGOs and victims organisations. These are the Gramscian institutions of the superstructure. While not without its critics (see, for example, Keane 2003), a Gramscian approach to civil society, which places conflict as central is, it is argued here, the most persuasive and one that has a strong resonance with the data collected in Ivory Coast.

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<sup>42</sup> Interview, Abidjan, September 2010 (Club UA 2010).



## Chapter 5 – State-Corporate Crime: the ‘Ship of Death’

### *Introduction*

This chapter explains how the Trafigura corporation created lethal toxic waste by processing a cheap oil product from Mexico (Day 2010) and, with the support of key sections of the Ivorian state, dumped that waste in Abidjan, Ivory Coast in August 2006 (an incident hereinafter referred to as ‘the dumping’). The deviance perceived by civil society actors is catalogued in order to illuminate how the dumping came about and the criminal collusion between Trafigura and the Ivorian state. Coker naphtha, a heavy oil with a high sulphur content produced as a by-product of some refinery operations, was transported through the USA from the Mexican Cadereyta refinery and was loaded onto a Trafigura chartered Panama-registered ship, the *Probo Koala*. On board this ship the coker naphtha was mixed with caustic soda in a rudimentary refining process which produced a hazardous by-product. Once the ‘caustic washing’ was completed the toxic waste was pumped into ‘slop’ tanks designed to store excess oil and water. The cleaned oil was then blended with other oil products to make it marketable (Böhler 2009). The destination of the cheap oil product was Estonia, and on its way there the *Probo Koala* stopped to refuel in Amsterdam. While docked in Amsterdam the company attempted to dispose of the toxic waste by passing it off as standard ship’s slops but it was rejected from the Dutch port – illegally according to the Dutch judiciary (Böhler 2009). Trafigura made further attempts to arrange for the waste to be unloaded elsewhere before finally deciding to berth, unload and dump 550 cubic metres of the waste in Ivory Coast. Trafigura’s choice of disposal method was at all times dictated by the search for a cheap way to offload or outsource the waste and Knauer et al (2006) argue that the dumping was indicative of what happens when *inter alia*, “criminal profiteers seek low-cost solutions” (Knauer et al 2006: 2).

The dumping was a complex crime, spanning the globe and involving multiple political and economic organisations. Achim Steiner, director of United Nations Environment Programme (UNEP), argues that the dumping was “a particularly painful example of how illegal waste disposal causes human suffering” (quoted in Knauer et al 2006: 2). The case-study is worthy of criminological study as it may provide some insight into

clandestine but potentially pervasive criminal activity. Stavros Dimas<sup>43</sup> argued that “the *Probo Koala* incident is only the tip of the iceberg” (Dimas 2006).

This chapter will track the decision-making by both Trafigura and the Ivorian state and will follow the waste’s path from off the coast of Gibraltar (where caustic washing took place aboard the *Probo Koala*) to sites around Abidjan, Ivory Coast. The chapter combines primary sources (including emails and diplomatic cables released by *Wikileaks* and others) with a wealth of secondary data and the focus of the chapter is on the interrelationship between Trafigura and the Ivorian government, and how this can be understood using a theory of state-corporate crime. The definition of state-corporate employed by this project is set out in Chapter 1. This chapter will analyse the decisions made using the state-corporate crime integrated model, which is conceptually concerned with motivation, opportunity, structure and operationality of control on three levels of analysis: the individual, the organisational and the institutional (Kramer et al 2002; Kauzlarich and Kramer 1998).

According to Kramer et al, the theory of state-corporate crime focuses on “how certain behaviours, committed at the intersection of corporate and state goals, come to be understood as not-crime, either because they are not named as such by law or are not treated as such by those who administer and enforce the law” (Kramer et al 2002: 265). The intersection between the goals of the corporation and the state is the central focus of this chapter. Both corporations and state governments are motivated by goals and seek opportunities to realise these goals. While states and corporations (and any sub-culture therein) may not share the same goals, pathways to goal attainment can cross.

State-initiated corporate crime “occurs when corporations, employed by the government, engage in organizational deviance at the direction of, or with the tacit approval of, the government” (Kramer et al 2002: 271). State-facilitated corporate crime, on the other hand, “occurs when government regulatory institutions fail to restrain deviant business activities, either because of direct collusion between business and government or because they adhere to shared goals whose attainment would be hampered by aggressive regulation” (Kramer et al 2002: 271-272). Therefore, state and corporations will share a common goal when the crime is state-initiated. On the other hand, with state-facilitated crimes, goals can be mutually exclusive but have shared

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<sup>43</sup> Member of the European Commission responsible for protection of the European Union’s environment.

pathways to attainment. Lasslett (2010) questions the value of a state-facilitated/-initiated paradigm, arguing that it ignores the fact that state-corporate crimes may be initiated or facilitated by a corporate body. In the case of the dumping examined in this chapter, the data reveals that the crime was indeed primarily ‘initiated’ by the corporation in its selection of and approach to Ivory Coast as a potential dump-site for its toxic waste. However, the dumping was readily facilitated by the Ivorian state and it will be argued that the fact pattern fits well with the above definition of state-facilitated corporate crime. Furthermore, because the focus of the definition of state-corporate crime is on the mutually reinforcing *interaction* between the institutions of the state and corporations (Kramer et al 2002), it is not necessary to literally determine ‘who started it?’ or determine precisely how and when this relationship (whether direct or otherwise) came about.

The ‘deviant business activities’, that were identified by civil society organisations and outlined below, were not restrained by the state (through the law or otherwise) because, it is argued here, there was direct collusion between Trafigura and elements of the Ivory Coast state apparatus, both of whom were pursuing deviant organisational goals. The impunity which effectively followed this lack of control and sanction forms part of the crime.

While Kramer et al’s (2002) integrated-model provides a useful framework for analysing the available data to understand how opportunity and motivation factors resulted in the large-scale crime, the list of ‘catalysts for action’ (Kauzlarich and Kramer 1998) employed by the model is not adopted wholesale here. A lack of controls and constraints in facilitating state-corporate crime also forms a significant part of the integrated model and can help frame and evaluate the actions of civil society in resisting the lethal dumping of toxic waste in Abidjan, an issue that is examined further in Chapter 6.

The dumping precipitated further crimes and the conceptual thread linking this chapter and the following two is provided by the involvement of the state of Ivory Coast acting as a nexus between the market and civil society sectors. The dumping could not have been committed without the collaboration of state actors, through tacit approval and collusion. The victims created by the state-corporate crime of dumping are further exploited as a result of state-organised crime, again facilitated by the Ivorian state.

Throughout this chapter, Cohen's (1993) theory detailing three forms of denial, which can operate at the individual and organisational level, is used to analyse statements made by corporate and state actors. The three forms of denial are: denial of the past, where history is distorted or misremembered; literal denial, statements of wilful deceit; and implicative denial, "excuses, justifications, rationalisations or neutralisations" (Cohen 1993: 110). Denial and cover-up are indicative of deviant behaviour (Green and Ward 2004). It is important to note here that denial does not equate to deviance, not least because denial is not imposed upon actions by an audience. However, denial can be engaged to avoid exposure of acts to an audience in order to avoid or 'neutralise' the effects of a deviant label. And Green and Ward argue that "deviant behaviour is not only that which other people so label, but that which the actors conceal because of their anticipation of how a social audience would label it if it became known" (Green and Ward 2004: 20). It will be argued in this chapter that Trafigura employees used implicative denial in order to organise the dumping in the face of warning signs that the results may be potentially damaging to the health of the local population. After the dumping takes place, tactics of denial of the past and literal denial are used to cover up the fact that the dumping event took place; or if it did, that the injuries had nothing to do with the international corporation's decisions and actions. These latter manifestations of denial are examined in Chapter 8.

The following sections follow the toxic waste from its source underground in Mexico to its victims in Ivory Coast, and examine the decisions made along the way. Using internal, leaked emails from Trafigura it is possible to piece together the decision-making process of the corporation in relation to the waste and its disposal. Using official government reports and statements made by Ivorian government representatives and others, it is possible to demonstrate how the waste was allowed to be dumped without the requisite regard to the consequences on the local population.

### *Origins of Trafigura*

Jenkins and Braithwaite notice two recurring themes in the empirical literature on corporate crime. Firstly, the worst corporate crimes result from pressure from senior management: "organizations, like fish, rot from the head down" (Jenkins and Braithwaite 1993: 221); and secondly, "it is greed or the profit motive that is responsible for corporate crime" (Jenkins and Braithwaite 1993: 222). The accusation of

greed in the latter theme is relatively uncontroversial and most companies would agree that their primary goal is that of profit maximisation (Hirshleifer et al 2005). Punch argues, however, that while the profit motive is fundamental, there are other possible goals for corporations: “to control markets, to damage competitors, to enhance their power” (Punch 2000: 255). The former theme argues that the worst corporate crimes are a direct result of the pressure brought to bear on employees by management. This illuminates paths for analysis of the criminality of an organisation, through management’s attitude to behaviour that could be perceived as deviance, which can trickle ‘from the head down’ through the organisational hierarchy, using internal communication systems. The major shareholder-owners of Trafigura were heavily involved in the day-to-day running of the corporation<sup>44</sup> and were personally involved in the state-corporate crime of toxic waste dumping as described below. Pressure from senior management can induce criminal behaviour (Jenkins and Braithwaite 1993) and corporate culture is often created and directed by senior management. It is to the chief executive officer (CEO) and founders of a company that lower echelons of staff will look to and take lead from, and Punch (2000) argues that the ruthless domination of some leaders can lead to sycophancy in subordinates. Some of the emails analysed below display an obsequious tone by Trafigura staff when addressing the CEO.

Trafigura’s organisational culture and approach to ‘doing things’ (Deal and Kennedy 1982) may have been dictated by the corporate family from which it was born. Trafigura is a corporation that developed from a group of companies set up and controlled by Marc Rich in 1993 (Leigh 2009b; Ammann 2009) and was founded by Claude Dauphin (Trafigura’s CEO) and Eric de Turckheim, both former colleagues of Rich (Milmo and Adetunji 2009). Rich launched Glencore, the world’s largest commodities trader (Pidd et al 2011) under his own name in 1974 and he is credited by some commentators with the development of a spot market for crude oil (Onstad et al 2011). Trafigura is in direct competition with Glencore but as former executives in his successful empire, Dauphin and de Turckheim experienced Rich’s way of doing business. Rich was indicted by Rudolph Giuliani<sup>45</sup> in 1983 for breaching sanctions

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<sup>44</sup> See EMAIL From: JMN; To: CD [CEO]; Sent: Tue Dec 27 2005 23:24; Subject: Re: More High Sulphur from PMI).

<sup>45</sup> Acting as US Federal Prosecutor.

against Iran and tax evasion.<sup>46</sup> He was also involved in deals that breached sanctions against South Africa (Milmo and Adetunji 2009) and has admitted bribing officials in Nigeria and working with Mossad<sup>47</sup> (Ammann 2009). Punch argues that it is “possible that seeking deviant solutions becomes imbedded in corporate culture” (Punch 2000: 256) and the data analysed in this chapter shows that Dauphin and de Turckheim have employed remedies that have been labelled as deviant, both before and after the dumping. Rich evaded capture for 19 years, living as a fugitive of justice, and in 2001 he was pardoned by US President Clinton on his last day of office (Leigh 2009b; Milmo and Adetunji 2009; US DoJ 2001). Clinton (2001) outlined his eight ‘legal and foreign policy’ reasons for the pardon in an op-ed article in the *New York Times* listing various lawyers and academics that agreed with him – and stressed an ‘important’ reason as being:

Many present and former high-ranking Israeli officials of both major political parties and leaders of Jewish communities in America and Europe urged the pardon of Mr. Rich because of his contributions and services to Israeli charitable causes, to the Mossad’s efforts to rescue and evacuate Jews from hostile countries, and to the peace process through sponsorship of education and health programs in Gaza and the West Bank. (Clinton 2001)

This preferential treatment by the US president points to the powerful connections enjoyed by Rich. Senior Israeli politicians, Ehud Barak and Shimon Peres, were among those who lobbied for his pardon (Ammann 2009). Trafigura too has links to powerful figures, most notably Lord Strathclyde, Conservative leader in the House of Lords, who was a director at Trafigura (and specifically at the Galena Asset Management hedge fund) until he decided to step down in readiness for the 2010 UK general election (Leigh and Evans 2009).

### *Corporate Structure*

Trafigura is a large, privately held or ‘close’ international corporation and shares are not available for purchase. A close company does not have the same reporting obligations

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<sup>46</sup> United States District Court, Southern District of New York, *United States v Marc Rich (and others)*, Indictment S 83 Cr. 579 (SWK), available at <http://www.thesmokinggun.com/file/pardon-me-marc-rich-indictment>, accessed November 2011.

<sup>47</sup> Mossad, Israel’s secret service, has been repeatedly accused of operating outside the law; from the illegal transfer of Adolf Eichmann from Argentina in 1960 to the assassination in Dubai of Mahmoud al-Mabhouh (a leader of Hamas) in 2010.

as a publicly traded company<sup>48</sup> as shares in the company are not available to members of the public. Public limited companies are subject to stricter reporting regimes as government regulations seek to protect the interests of the public share-holders by ensuring information is available regarding the companies' activities. Therefore, close companies are inherently more secretive. While this form of corporation is popular, profits can be limited as they lack the advantage of being able to publicly raise capital by floating on a stock exchange. To give a comparison of the economic size of these types of firms, the largest 223 privately held firms in the US earn about US\$1.4 trillion in revenues per annum (average of 2009 and 2010) (DeCarlo et al 2010). The top seven publicly owned firms in the US earned about US\$1.4 trillion in revenues in 2010 (Fortune 500 2010). Privately held companies may have limited abilities to raise capital publicly, but these limitations are mitigated by the ability of the board to maintain control of the corporation, as there is no risk of a hostile take-over for example, and to keep its activities and standard operating procedures (SOPs) secret.

The term 'Trafigura' is used here to describe the corporate entity that includes a large group of incorporated bodies. In the UK, Trafigura Ltd<sup>49</sup> was incorporated in 1992 and was formerly known as Merongroom Ltd and thereafter Raw Material Services Ltd. Trafigura Derivatives Ltd,<sup>50</sup> was incorporated in 1998 and was formerly known as Trafigura Brokers Ltd. Trafigura Energy Ltd,<sup>51</sup> was incorporated in 2001 and Galena Asset Management Ltd<sup>52</sup> was incorporated in 2003 for business related to security broking and fund management and was formerly known as Trafigura Asset Management Ltd. All of the foregoing UK-based corporate vehicles listed their registered office as Portman House, 2 Portman Street, London W1H 6DU at the time of the dumping in August 2006 (Companies House 2010). Other main corporate units include: Farringford NV<sup>53</sup> and Farringford Beheer NV,<sup>54</sup> widely believed to be Trafigura's parent companies; both incorporated in September 1992 and registered in Curaçao, The Netherlands Antilles (Curaçao Commercial Register 2011); Trafigura Beheer BV (The Netherlands); Puma Energy Holdings BV (The Netherlands); Trafigura AG (Switzerland), Trafigura Pte Ltd (Singapore), Trafigura Maritime Ventures Ltd

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<sup>48</sup> Under UK law (Companies Act 2006) this would include directors' and secretaries' names and some financial information about the company.

<sup>49</sup> UK company number 02737924.

<sup>50</sup> UK company number 03621790.

<sup>51</sup> UK company number 04160239.

<sup>52</sup> UK company number 04657028, FSA (UK) registration number 223696.

<sup>53</sup> Curaçao company number 61251.

<sup>54</sup> Curaçao company number 61175.

(Greek Branch), Trafigura Canada General Partnership and in Ivory Coast Trafigura has the 100% owned subsidiary called Puma Energy (Trafigura 2010). There are innumerable further subsidiaries, holdings and memberships making the full organisational structure and functioning of Trafigura – and indeed of any large international corporation – a complex issue, made more difficult in the case of private and secretive non-stock exchange-listed corporations. Harding (2007) defines an organisation based on three characteristics: “[A] clear structure, the existence of organizational goals which creates a sense of shared mission, and the substitutability of the individuals who work in them” (Harding 2007: 39). Trafigura does have a clear structure, despite the complexity of the relationships between its member units, and displays organisational goals as seen below. When examining organisational crime, wholly owned subsidiaries should be considered as an integral part of the larger group as they are merely sub-units of the whole – despite the fact that they may be incorporated as a separate legal entity. Subsidiaries owe their existence to, take direction from and share the organisational goals of the parent company.

Despite often being misdescribed as Dutch, Curaçao, British or Swiss, Trafigura is an international corporation and operates across borders with a physical presence in at least 44 countries (Trafigura 2010). Leigh argues that Trafigura’s “operations are essentially run from London” (Leigh 2009b) and that Trafigura “runs many worldwide operations from a London headquarters” (Leigh 2010) but this may oversimplify the issue of corporate directing and overlooks the difficulty of how we define the *where* for a company’s centre of operations. International corporations may purposefully be not tied to any one base and can close down, move and set up offices where they see fit, at any time and without difficulty, to take advantage of disparate domestic criminal, civil and tax legal systems. For example, in early 2011, Galena Asset Management (a major Trafigura subsidiary) moved to Switzerland to take advantage of lower tax rates (Leigh 2009d). But the question of *where* a company is based is essentially a problem of legal construction as most domestic or nation-state legal systems require a physical presence before they can exercise jurisdiction over ‘legal persons’.

In considering the interrelationship which this thesis argues existed between Trafigura and the Ivorian state it is important to examine the balance of power which existed between the two. Trafigura is the world’s third-largest independent oil trader, behind Vitol and Glencore (Davis 2008; Tan 2010), and made about US\$440 million profit in



2008 (Leigh 2009b), about US\$1 billion profit in 2009 (Blas and Sakoui 2010) and had an annual turnover in 2008 and 2009 of over US\$70 billion (Leigh 2009b; Milmo and Adetunji 2009). This turnover figure dwarfs Ivory Coast's GDP of around US\$25 billion (OECD 2007; UN 2011). The corporation charters "up to 100 tankers at sea, and control[s] worldwide tank farms which blend fuel" (Leigh 2009b) and claims to trade over 2 million barrels daily, with access to 30 million barrels of storage facilities and employs about 2,000 people across the group (Trafigura 2010). Galena Asset Management alone is claimed to have assets of US\$1 billion (Trafigura 2010). The market that oil trading corporations operate in is lucrative, involving large amounts of money. On any given day 1 billion barrels of oil change hands on the New York Mercantile Exchange, with a value of over US\$70 billion (Leigh 2009b). This puts the relative financial power of the two organisations into stark perspective – Trafigura can earn the equivalent of the Ivory Coast annual GDP in about four months. However, financial might is not the only way to measure power and the Ivorian state had the ability to issue licences to the corporation enabling the dumping to take place. These included corporate licences to the companies involved and access to the state-run ports. These concessions are beyond the competence of any corporation and are essentially what the state brought to the table in this collusion.

As a private company, Trafigura's accounts are not routinely made available to the public and are difficult to verify. But there was a "rare glimpse" (Blas and Sakoui 2010) into the corporation's 2009 figures when Trafigura issued its first Eurobond in 2010, which forced the organisation to reveal details that it had previously closely guarded. This brief, limited insight prompted the *Financial Times* to declare that "global traders enjoy a more profitable model than previously thought" (Blas and Sakoui 2010). The form of the model is unclear but the CEO (one of the founders) owns approximately 20% of the corporation, while the rest is controlled by some 500 senior employees (Blas and Sakoui 2010). Therefore, any profits made by Trafigura directly correlate to the CEO's personal fortune. In such cases motivational catalysts for action overlap on the individual and organisational levels of analyses under the integrated model; in other words, individual and organisational goals merge. This alignment can provide a powerful motivational force and may be a driver of behaviour that could be described as deviance. The following sections detail the deviant elements of the 2006 dumping, as outlined by government and civil society actors.

### *The Ivory Coast Dumping*

As detailed in Chapter 9, Trafigura is a recidivist organisation that appears prone to deviance. A deficiency of transparency and lack of cooperation with any authorities means that there is very little information available to allow an analysis of Trafigura's other reported crimes. However, with the crime of toxic waste dumping in Ivory Coast in August 2006 there have been reports and documentation – some of which have been leaked<sup>55</sup> – that allow for a modest insight into the mechanism of such a large scale crime.

This section relies on a range of primary documentation including the Minton report (compiled on instructions from Trafigura's solicitors and leaked by *Wikileaks* and the *Guardian* newspaper), the report of the Hulshof Commission,<sup>56</sup> United Nations reports, the reports of the International Commission of Inquiry and National Commission of Inquiry (both based in Ivory Coast), the internal emails of Trafigura and internal letters of criminal investigators to look at the motivation and opportunity available to the company. We first examine the creation of the waste and then its subsequent dumping. The section to follow will analyse the role of the state of Ivory Coast in the dumping.

### *Mexico to Ivory Coast*

Petróleos Mexicanos (Pemex) is a parastatal company formed in 1938 when the Mexican State forcefully commandeered the assets of UK and US oil companies. In 2005 and 2006 and for almost 60 years prior, Pemex was the only company allowed to explore, produce, refine and sell oil and its derivatives in Mexico (Bogan 2009). By 2006 Pemex's revenue had peaked and the company claimed to be “the biggest enterprise in Mexico” (Pemex 2011). However, the company was soon on the decline and the pressure of poor performance led Mexico's Congress to change industry rules in 2008, allowing Pemex to hire private and foreign companies to explore and produce oil (Bogan 2009). Up to 2006, the Mexican government received about 40% of its budget from Pemex and it has accurately been referred to as the country's ‘golden goose’ but a decline in daily oil production since 2004 (Rodriguez 2010) – from 3.8 million barrels

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<sup>55</sup> Reports have been received from international press correspondents based in Abidjan and international NGO staff in the United Kingdom. The sources wish to remain anonymous.

<sup>56</sup> A report prepared at the request of the Deputy Mayor of Health, Environment, Human Resources, Public Space of the City of Amsterdam and the Alderman of Finance, Economic Affairs and the Ports of the City of Amsterdam.

per day to 3.25 million in 2006 to 2.5 million in 2010<sup>57</sup> – has, despite the buoyant world market where oil was trading up to US\$100 per barrel, led to over US\$50 billion debt (Caruso-Cabrera 2011). In 2006, output declined by over 13% (Malkin 2007). PMI Comercio Internacional, SA de CV (PMI) is the commercial arm of Pemex and exports crude oil and related products, including coker naphtha (PMI 2007) – a by-product of the refinery process (TCE 2009). Its stated mission is, *inter alia*, “[t]o maximize the value of petroleum exports” (PMI 2007). This mission was important not only to the company but to the Mexican state and Pemex was under considerable political pressure to generate profit at an institutional level, compounding internal managerial pressure at an organisational level (Kauzlarich and Kramer 1998). An alignment of two levels of motivational catalysts for criminal action provided a strong driver for goal attainment, each of which on their own could be a factor in deviancy (Jenkins and Braithwaite 1993).

In 2002, Pemex refurbished its refinery at Cadereyta, Mexico. In an internal letter from Holland and Knight, lawyers for PMI, to a US Environmental Protection Agency (EPA)<sup>58</sup> criminal investigation agent, it was revealed that at this time Pemex “began refining heavier crude oil slate 47/53 Isthmus/Maya ratio”,<sup>59</sup> which produced the coker naphtha as a by-product. The letter also contained an explanation for the export of coker naphtha to the US by PMI:

Coker gasoline is normally reprocessed at the refinery through the use of a reactor to remove sulphur and silica. However, the Cadereyta revamping project did not consider the construction of such a reactor (mainly due to budget reasons).<sup>60/61</sup>

According to the BBC’s legal team, coker naphtha rarely comes onto the open market as

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<sup>57</sup> In 2009 output fell at its fastest rate since 1942 (Martinez and Rodriguez 2009).

<sup>58</sup> A Special Agent of the US Environmental Protection Agency (EPA) investigating PMI Trading and Coker Naphtha.

<sup>59</sup> Letter of Holland and Knight, McLean, Virginia, US to Criminal Investigations Division of the EPA, Boston, Massachusetts, US dated 14<sup>th</sup> December 2006.

<sup>60</sup> Ibid.

<sup>61</sup> In February 2007, Pemex stated that they would upgrade the Cadereyta refinery in order to “produce gasoline and diesel with ultra-low sulphur content” (SPG Media 2011).

it is usually refined on-site,<sup>62</sup> and the exclusion of such facilities was an unusual decision. The coker naphtha had, since early 2003, been stored anywhere the company could find space, in “crude oil tanks, gas oil tanks and gasoline tanks within the refinery”.<sup>63</sup> After about 30 months of accumulation, capacity at the refinery was filled, and Pemex made the decision to offer the unrefined oil for sale on the market.<sup>64</sup>

This decision was founded on basic economics – storage capacity had run out, and in order to continue production at any level storage needed to be cleared up quickly. The urgency will have devalued the contents of the storage, thus leading to PMI showing prices that were very attractive to Trafigura who purchased at “very low cost”.<sup>65</sup>

The commodity needed to be trucked to a suitable point of sale because the relevant Mexican and US pipelines only accepted ‘finished’ or refined product. PMI transported about 84,000 tons of coker naphtha on trucks to the Port of Brownsville, a deep water seaport in Texas, USA and a terminus of the Gulf Intracoastal Waterway, located about 13 kilometres from the USA-Mexico border on the Rio Grande (PoB 2011) where Trafigura accepted delivery<sup>66</sup> (TCE 2009).

Three loads of coker naphtha of approximately 28,000 tonnes<sup>67</sup> each were loaded onto three ships at Brownsville:<sup>68</sup> *Mt Seapurha*,<sup>69</sup> *Mt Moselle*<sup>70</sup> and *Mt Seavinha*.<sup>71</sup> The cargos were transferred to the *Mt Probo Koala* on 11<sup>th</sup> April, 19<sup>th</sup> May and 18<sup>th</sup> June

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<sup>62</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 6.

<sup>63</sup> Letter of Holland and Knight, McLean, Virginia, US to Criminal Investigations Division of the EPA, Boston, Massachusetts, US dated 14<sup>th</sup> December 2006.

<sup>64</sup> Ibid.

<sup>65</sup> Quoted in Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf>, or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), both accessed 16/02/2010), at page 5, paragraph 4.2.

<sup>66</sup> Letter of Holland and Knight, McLean, Virginia, US to Criminal Investigations Division of the EPA, Boston, Massachusetts, US dated 14<sup>th</sup> December 2006.

<sup>67</sup> A tonne is a term sometimes used in shipping and is equivalent to 1,000 kilograms (kg).

<sup>68</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 5, paragraph 4.2.

<sup>69</sup> On 20<sup>th</sup> March 2006.

<sup>70</sup> On 25<sup>th</sup> April 2006.

<sup>71</sup> On 1<sup>st</sup> June 2006.

respectively (Minton 2006). The *Probo Koala* is a bulk cargo transporter or oil tanker, which sails under a Panamanian flag<sup>72</sup> (UNHRC 2009; Eze 2008) or ‘flag of convenience’.

In 2006, around 16% the world fleet of oil tankers were recorded in Panama’s open registry and about 55% of the world fleet of oil tankers were registered in the ten major open and international registries<sup>73</sup> (UNCTAD 2010). Ships on the high seas are only subject to the authority of the state whose flag they fly<sup>74</sup> and some commentators have argued that vessels sailing under flags of convenience have become “nearly synonymous with environmental hazards ... [as] [o]pen registries do not sign on to marine safety and environmental treaties and have also been said to be apathetic toward enforcement of international law” (Emeka 2001: 115, 116). Even when the open registry states sign international treaties, they “appear reluctant to enforce standards against their ships” (Lowe 1975: 108). The main reason for oil-shipping multinational corporations to have adopted flags of convenience is simply the maximisation of profit (Payne 1980) as they need not bear the cost of complying with international standards (Emeka 2001). Furthermore, the open registry states have no incentive to adopt or enforce standards that may send a lucrative business elsewhere. Panama receives 5% of its national budget from fees charged for the registry and in Liberia (Panama’s main open registry competitor), the ship registry earns one-sixth of the country’s total revenue (DeSombre 2008). The use by Trafigura of a ship registered in Panama allowed them to increase profits while avoiding international environmental norms.

The *Probo Koala* was chartered by Trafigura in 2004 and, according to the UN investigation, had two slop tanks for the storage of “cargo residues, tank purging water and hydrocarbon mixtures” (UNHRC 2009: 7). The waste produced by caustic washing was stored in these tanks. The sulphur content of the unrefined coker naphtha needed to be reduced to make it saleable and the method of caustic washing was decided upon, where caustic soda (NaOH, one-third aqueous) and ARI-100 EXL catalyst (cobalt phthalocyanine sulphonate) was added. The tanks were allowed to circulate for one day and then allowed to settle. The caustic solution, the extracted sulphur (Day 2010) and the bottom layer of the naphtha were pumped into the slop tanks to ensure removal of

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<sup>72</sup> And owned by Greek shipping company, Prime Marine Management Inc.

<sup>73</sup> Antigua and Barbuda, Bahamas, Bermuda, Cyprus, Isle of Man, Liberia, Malta, Marshall Islands, Panama, and Saint Vincent and Grenadines.

<sup>74</sup> Case of the S.S. “Lotus” (France v. Turkey), 1927 P.C.U. (Ser. A) No. 10, at 25.

all the undesirable by-products. The process reduced the sulphur content of the naphtha by half and it was then used as a blendstock to make gasoline. The slops were reported as containing 150 cubic metres of NaOH, 370 cubic metres of treated naphtha and free water, and 24 kilogrammes of ARI-100 EXL catalyst (Milton 2006).

Internal emails between a group of ten Trafigura personnel – including the CEO and London-based traders – released simultaneously by the *Guardian* (Guardian 2009) and *Wikileaks* (Wikileaks 2009) reveal the decision-making process that led to the waste travelling from Europe to its dumping in Ivory Coast. Greenpeace France argued that the emails show how Trafigura's management were fully aware that the waste was dangerous and decided to send it to Africa so that it could be disposed of cheaply (Greenpeace 2011). At the outset, on 27<sup>th</sup> December 2005, the emails made reference to the profit goal that could be realised by the deal: "This is as cheap as anyone can imagine and should make serious dollars."<sup>75</sup> But the corporation quickly became aware of the problems associated with the caustic washing of such cheap oil: "... US/Singapore and European terminals no longer allow the use of caustics soda washes since local environmental agencies do not allow disposal of the toxic caustic after treatment."<sup>76</sup> According to an email from a London-based trader (Guardian 2009), the solution was to employ a 'floating' location for the caustic washing, but the problem of treatment and outsourcing of the waste remained: "... find a chemical carrier and treat cargo on vessel outside US (but we still need to find a company that will take the waste)".<sup>77</sup> The first attempt to offload the waste involved engaging a Baltic region caustic supplier to take away the unwanted toxic material after the caustic washing<sup>78</sup> and they were aware that "...the Caustic supplier disposes the slurry in Fujairah (not sure if in a legal way!)".<sup>79</sup> At one point, early on in the exchange, a trader based in London displays ignorance of the process involved in washing the coker naphtha: "This is not very hazardous in the overall scheme of things, a bit of caustic in some water with

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<sup>75</sup> EMAIL From: JMN; To: LC, JT, FA, AH; CC: NA, JM, JL; Sent: Tue Dec 27 16:54:44 2005; Subject: Re: More High Sulphur from PMI.

<sup>76</sup> EMAIL From: NA; To: JMN, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 19:29; Subject: Re: More High Sulphur from PMI.

<sup>77</sup> EMAIL From: NA; To: JT, JMN, LC, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 19:31; Subject: Re: More High Sulphur from PMI.

<sup>78</sup> EMAIL From: NA; To: JMN, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 19:29; Subject: Re: More High Sulphur from PMI.

<sup>79</sup> EMAIL From: NA; To: JMN, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 22:42; Subject: Re: More High Sulphur from PMI.

trace gasoline,”<sup>80</sup> but further investigation by employees of the corporation revealed that the options for the disposal of waste from this type of process are very limited: “There is only one specialist disposal in rotterdam [sic] they charge \$250/kg but not allowed to drive across EU borders etc.”<sup>81</sup> At this stage the corporation were plainly aware that the caustic washing process was illegal in some states because of the toxic nature of the waste produced, but management was determined to continue the operations.

By late December 27<sup>th</sup> an email is sent to the Trafigura CEO from a Trafigura trader praising his innovative intervention on the issue of the unwanted waste and promising more cheap oil:

FYI – following your lateral thought about cleaning the PMI origin high Mercaptan Sulphur material and paying a disposal company to process the waste away. We will make it happen. PMI showing us more barrels for Super Cheap now.<sup>82</sup>

The CEO’s idea is pushed to others, along with a reminder of the profits available:

Claude owns a waste disposal company and wants us to be creative. Graham has worries that it will all turn black. Me and leon want it cos each cargo should make 7m!!<sup>83</sup>

The motivation provided by this high profit margin is a goal of capital accumulation which is often, as argued by Green and Ward, a “highly criminogenic force” (2004).

The situation by the end of 2005 is summarised by a chemist based in Trafigura’s London office (Milmo 2010) on 28<sup>th</sup> December:

I have approached all our storage terminals with the possibility of Caustic washing and only Vopak Fujairah and Tankmed La Skhirra our [sic] willing to entertain the idea, and currently perform this operation at FRCL (Fajairah) only. This operation is no longer allowed in EU / US and Singapore. Caustic washes

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<sup>80</sup> EMAIL From: JMN; To: NA, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 22:42; Subject: Re: More High Sulphur from PMI.

<sup>81</sup> EMAIL From: NA; To: JMN, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 22:42; Subject: Re: More High Sulphur from PMI.

<sup>82</sup> EMAIL From: JMN; To: CD; Sent: Tue Dec 27 2005 23:24; Subject: Re: More High Sulphur from PMI.

<sup>83</sup> EMAIL From: JMN; To: NA; Sent: Tue Dec 27 2005 23:24; Subject: Re: More High Sulphur from PMI.

are banned by most countries due to the hazardous nature of the waste (mercaptans, phenols, smell) and suppliers of caustic are unwilling to dispose of the waste since there are not many facilities remaining in the market. There is a company in Rotterdam that burns such waste in a high stack chimney and charges are approx \$200/kg and could have up to 1000kgs of sludge after a treatment operation. Under EU law you no longer allowed to transport such waste across EU borders.<sup>84</sup>

This email clearly shows that in 2005 Trafigura were fully aware that the waste produced by the caustic washing process was hazardous. The staff member who wrote this email was instrumental in attempting to pass off the waste as slops in Amsterdam. Furthermore, the CEO of Trafigura was carbon copied on this email. Punch, in a study of cases of corporate wrongdoing, argues that, “some managers, in order to control their markets and environments (and for a broad spectrum of other motives), will consciously and forcefully employ almost any means – devious, foul, or downright illegal – to achieve their aims” (Punch 1996: 1).

By the end of December 2005, Trafigura staff had described further attempts to dispose of the waste with the caustic supplier in Estonia, but the supplier wanted to test it first and this deal appears to have fallen through after the waste was tested<sup>85</sup> (a problem which recurred in Amsterdam, discussed below). The authorities at La Skhirra, Tunisia were also still considering disposal at that time and Trafigura was engaged in negotiations with them.<sup>86</sup> But as both these options fell through, Trafigura was forced to consider ‘creative’ alternatives for both the washing and the waste disposal.

La Skhirra agreed for the coker naphtha to be de-sulphurised at the port, but this led to offensive smell problems, “which caused great distress to the local workers and population”.<sup>87</sup> From 1<sup>st</sup> February to 10<sup>th</sup> March 2006, the company was forced to look into alternate possibilities for caustic washing. A large, cheap old ship – “costed [sic] at \$15,000 [about €12,000] per day”<sup>88</sup> and big enough to treat 40,000 cubic metres – was considered a good option as there was a distinct possibility that the washing process

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<sup>84</sup> EMAIL From: NA; To: LC, JMN; CC: JL, JT, FA, AH, GS, CD; Sent: Tue Dec 28 2005 15:11; Subject: Re: More High Sulphur from PMI.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> EMAIL From: White Consulting Group; To: NA; CC: TB; Sent: 24 March 2006 11:46; Subject: La Skhirra.

<sup>88</sup> EMAIL From AH; To: LC; CC: PE, JJ, BS; Sent: Wed Feb 01 03:12:46 2006; Subject: Coker Naphtha – 1500 ppm Mercaptans.



would erode a ship's seals, leading to the vessel's sinking. The decision to specifically use an ageing ship for a process that may precipitate that ship's sinking displays a disregard on the part of Trafigura, both for the crew of the ship as well as the ocean environment. Another scheme involved converting a small crude unit at Statia Terminals (Caribbean) into a Merox unit (Merox stands for mercaptan oxidation, a chemical process for the removal of mercaptans), "to treat the 1500 PPM mercaptans in the coker naphtha".<sup>89</sup> This option would take up to four months with an estimated cost of about US\$1 million to put in place. Such a capital outlay was not viable unless Trafigura could guarantee a long-term supply of the coker naphtha, which appeared to be uncertain in December 2007 according to an internal email of Trafigura where staff enquired as to how long they expect PMI to have availability.<sup>90</sup>

On 10<sup>th</sup> March, there was a tentative mention of dumping in an email between the head of gasoline trading in London and US-based staff: "I don't know how we dispose of the slops and I don't imply we would dump them, but for sure there must be some way to pay someone to take them."<sup>91</sup> This email was interesting from the point of view of the denial of the subsequent crime (see Chapter 8 for further detail on the denial of the existence of toxic waste and the dumping). It seems that emphasis was being shifted by the author from dumping to paying someone to take it away, absolving the company of responsibility. The statement was a kind of implicatory denial (Cohen 1993), employing the euphemism of 'taking' the waste away in place of the word 'dumping'.

The *Probo Koala* was built in 1989 by a Greek company (Helsingin Sanomat 2009), old enough to assuage worries of losses in the event of the ship sinking. The ship was authorised to transport liquid sodium hydroxide (caustic soda), which could be used for removing mercaptans (sulphur-containing organic compounds) from the coker naphtha (UNHRC 2009). At some point prior to April 2006, a decision was made to drop anchor off the coast of Gibraltar, "as a makeshift processing plant" (TCE 2009) or "a floating processing plant" (Milmo 2009). Trafigura informed the subsequent UN investigation that;

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<sup>89</sup> Ibid.

<sup>90</sup> EMAIL From: JMN; To: LC, JT, FA, AH; CC: NA, JM, JL; Sent: Tue Dec 27 16:54:44 2005; Subject: Re: More High Sulphur from PMI.

<sup>91</sup> EMAIL From: LC; To: JL, TG; CC: JMN, NA; Sent: 10 March 2006 23:05; Subject: Caustic washing requirements.

gasoline blend stocks were transferred to the *Probo Koala* in the Mediterranean between April and June 2006. The blend stocks were treated with caustic soda in order to reduce the level of mercaptans. (UNHRC 2009: 7)

Trafigura sold the cleaned or ‘sweetened’ naphtha for a reported profit of UK£4 million (about €6 million) per cargo (Milmo 2009) with total profits of US\$19 million (about €15 million) (TCE 2009) and then had to deal with the waste contained in the slop tanks, which the corporation falsely reported to the UN investigation as “a mixture of water, blend stock and caustic soda” (UNHRC 2009: 8). Without a clear and legal solution for waste disposal, the corporation turned to subversive means and the following message sent to the captain of the *Probo Koala* showed a clear intention on the part of Trafigura to hide the nature of the waste:

pls ensure that any remains of caustic soda in the tanks’ interface are pumped into the slop tank to the best of your ability and kindly *do not, repeat do not disclose the presence of the material to anyone* at La Skhira and merely declare it as tank washings.<sup>92</sup> (emphasis added)

This is a ‘literal denial’ (Cohen 1993) of the toxic nature of the waste and could be an indicator of deviance on the part of the company. The issues of denial and the cover-up of the dumping are dealt with more comprehensively in Chapter 8.

In late April 2006, communications over the issue of the waste material display a more desperate tone and emails now bore the subject “PMI Shit”.<sup>93</sup>

... we are coming up with some problems regarding treating/disposing of the PMI naphtha out of Brownsville. We are now limited to caustic washing on a ship. La Skhirra where we were washing/discharging will not let us discharge this material anymore, so the ship we’re using for washing is now converted to floating storage. We also still haven’t tackled how we will dispose of the washings on board the vessel washing the cargo.<sup>94</sup>

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<sup>92</sup> EMAIL From: Cpt TheologsGamierakis (as agents for and on behalf of Trafigura); To: Probo Koala; CC: Prime Marine Management; Attn: Master Attn: Ops; April 15 2006.

<sup>93</sup> EMAIL From: LC; To: JT; CC: JMN, JL, CD; Tue Apr 18 12:36:19 2006; Subject: PMI shit.

<sup>94</sup> Ibid.

In late June, the possibility of offloading the waste in Amsterdam is considered and an email is sent by Trafigura's London chemist to Amsterdam Port Services (APS) seeking to dispose of the material as 'slops' (Day 2010):

we would like to dispose between 200-250 cbmsos [sic] gasoline Slops Majority is Water, Gasoline, Caustic Soda). This is currently stored in the slop tank of our vessel, *Mt Probo Koala* we would sil [sic] to the port of amsterdam [sic] and discharge.<sup>95</sup>

It is important to note here that Trafigura was, at this stage, well aware that the material in question was not in fact what is commonly known as 'slops' – wastewater from the ship. Furthermore, the company was also aware that only Rotterdam, and not Amsterdam, had the facilities to treat and dispose of this waste.<sup>96/97</sup>

APS produced quotes for the offload and treatment of the waste to which Trafigura agreed, stating, "we would like to proceed with this offer",<sup>98</sup> giving an estimated arrival at Amsterdam of 30<sup>th</sup> June 2006.<sup>99</sup>

The *Probo Koala* – en route to Paldiski, Estonia – docked in Amsterdam at the predetermined time with the stated intention of refuelling and purging its slop tanks. On the night of 2<sup>nd</sup> July 2006, APS collected some material from the *Probo Koala*'s slop tanks and, noticing a strong smell took a sample, "which revealed a significantly higher chemical oxygen demand than it was permitted and able to process on its premises, in addition to a high quantity of mercaptans, which was causing the foul stench" (UNHRC 2009: 8). An employee of APS stated that it was "the worst stench we have ever experienced here" (Eze 2008: 352).

Based on the toxicity of this material, APS then gave Trafigura a revised cost estimate – up from €20 to €900 per cubic metre, totalling up from about €10,000 to about €500,000 (Day 2010) – for treatment at Rotterdam (Eze 2008: 352). Trafigura rejected this quote as it posed a threat to profit margin and ordered the waste to be reloaded onto

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<sup>95</sup> EMAIL From: NA; To APS; June 20 2006 10:43; Subject: Re: Gasoline Slops Disposal.

<sup>96</sup> EMAIL From: NA; To: JMN, LC, JT, FA, AH; CC: JM, JL; Sent: Tue Dec 27 2005 22:42; Subject: Re: More High Sulphur from PMI.

<sup>97</sup> EMAIL From: NA; To: LC, JMN; CC: JL, JT, FA, AH, GS, CD; Sent: Tue Dec 28 2005 15:11; Subject: Re: More High Sulphur from PMI.

<sup>98</sup> EMAIL Van: NA; Verzonden: maandag 26 juni 2006 12:41; Aan: bert.wolf; CCAPS - BiancoVonk; Onderwerp:: FW: offer Probo Koala.

<sup>99</sup> Ibid.

the *Probo Koala* (UNHRC 2009 and Eze 2008): “we have instructed the slop barge to re-deliver the slop washings back to the vessel in subject due to the high cost of delivery and processing at Amsterdam”.<sup>100</sup> Had Trafigura paid the full treatment costs, the profits would have dropped from about €6 million to about €5.5 million. The avoidance of a sensible, viable solution to the waste issue because of this reduction in profit showed the lengths the corporation was willing to go to in order to maximise profit, a key indicator in corporate crime (Jenkins and Braithwaite 1993).

The Hulshof Commission found that this reloading of waste back onto the ship was against environmental regulations but Amsterdam’s environmental department were apparently unaware of this and failed to report the matter to the Amsterdam port authority (Hulshof Commission 2006). APS and the City of Amsterdam have now been successfully prosecuted by Dutch authorities for this failure. On 5<sup>th</sup> July 2006, the *Probo Koala* sailed for Paldiski but Amsterdam port officials had sent an urgent message to port authorities in Paldiski, warning of a “suspicious cargo” (Eze 2008: 352) and the *Probo Koala* was unable to offload the waste (Knauer et al 2006; Eze 2008). At Paldiski, Trafigura offloaded 3,300 tons of gasoline, loaded 26,000 tons of unleaded gasoline bound for Lomé, Togo and Lagos, Nigeria and set sail on 13<sup>th</sup> July 2006 (UNHRC 2009; Eze 2008). As noted above, Trafigura again tried to offload waste in Paldiski leading to an investigation by the Estonian police. There were also attempts to offload in Nigeria, and according to Trafigura, “the slops were not discharged in Nigeria as it was clear that there were insufficient facilities in place to receive them” (BBC 2009c). After unloading its gasoline cargo at Lomé and Lagos, the *Probo Koala* sailed to Ivory Coast. Since the tanker did not have a cargo, and none was scheduled to be picked up, its journey to Ivory Coast could only have been to unload the toxic waste. Further, the company would be well aware that the facilities in Ivory Coast would likely be no better than those in Nigeria.

In an email of 17<sup>th</sup> August, an employee of Trafigura (Fraser 2010) emailed the head of Puma Energy (KN), a local Trafigura subsidiary, stating that “we would like to discharge approx 528 CBM of ... a mix of Gasoline with caustic Soda and high concentration of Mercaptan Sulphur”.<sup>101</sup> The mix was again referred to using the

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<sup>100</sup> EMAIL From: TG; To: Bulk Marine Services BV; CC: Trafigura Athens Operations; Subject: Probo Koala / Re-Delivery of Slop Washings.

<sup>101</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 22.

euphemism ‘slops’. The email said that the waste should be “disposed properly to avoid any environmental concerns or problems with authorities”.<sup>102</sup> Puma Energy then telephoned WAIBS, Trafigura’s local shipping agent, who gave them a number for a ‘two-bit’ (Day 2010) company called ‘Tommy’ – the organisation that was contracted to receive the ‘slops’.

The next day, 18<sup>th</sup> August, the Trafigura employee telephoned the head of Shipping Services for WAIBS, to ask him “if it was possible for a ship, before passing through the Port of Abidjan, to include in its port costs the costs of discharging the slops in case of emergency”.<sup>103</sup> WAIBS agreed that this was possible and had been done in the past. WAIBS then informed two shipping agents of the specifics of this telephone conversation. Later that day, one of those agents informed Salomon Ugborugbo, director at Tommy, of the impending arrival of the *Probo Koala* and told him to make arrangements for the discharge of ‘slops’. During the afternoon of 18<sup>th</sup> August, the shipping agent introduced Ugborugbo to Puma Energy at Puma Energy’s request, where Puma Energy verified the licences and authorisations for Tommy. Puma asked Tommy to make an offer which took the following form:<sup>104</sup>

Given the high concentration of Mercaptan Sulphur and the strong smell of these products, a chemist, after reading your two emails, has advised us to dump the waste in an area outside of the city, called Akouédo, equipped in an adequate manner for receiving these kinds of chemical products. In order to avoid any risk of environmental accidents being imputed to Puma Energy, the ship or to you, the Tommy company assumes all responsibility and assures you that a good job will be done. The necessary documents will be given to the ship following the operation.

Marpol slops: 30 \$ US per m3

Chemical slops: 35 \$ US per m3

The terms of this hand-written ‘quote’ suggested that Tommy was an unprofessional operation, despite stating that they would ‘do a good job’ while assuring Puma Energy

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Abidjan, 18/08/2006, To Jorge Marrero, Via Captain Kablan, Subject: Collection of Slops, quoted in the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 24/25.

that any environmental accidents would not be imputed back to them. This view was supported by the National Inquiry (2006) which argued that Tommy had neither “the competence nor the technical or human means to treat the waste from the Probo Koala”.<sup>105</sup> The inability of Tommy to deal with this toxic waste was a fact that Trafigura should have known or ought to have known. Furthermore, the offered price of about US\$35 per cubic metre is significantly less than the Dutch quote, and this should have put Trafigura on notice that further investigation of Tommy’s capabilities was necessary. The Marpol Convention (discussed below) at 11(d) enumerates a list of waste-receiving facilities in each state and includes details of their capacity. Ivory Coast is not listed as possessing any suitable facilities and the National Inquiry states that this fact was acknowledged by the CEO of Trafigura and the West African Director of Trafigura.<sup>106</sup> Tommy is also believed by some commentators to be a vehicle set up by Ugborugbo solely for the purposes of this transaction, and “had just been established in July” (Eze 2008: 352).<sup>107</sup> Some commentators maintain that Simone Gbagbo, the Ivorian ‘first lady’, was involved in the incorporation of this company and Gonto reports that he was arrested and charged with ‘offences against the head of state’ for publishing a newspaper article that suggested as much (Gonto 2006).

On 18<sup>th</sup> August an advisor to Puma Energy telephoned the Abidjan Port Commander (‘Bombo’) to ask if he knew the head of Tommy, Ugborugbo. The Port Commander invited Ugborugbo to his office and verified the existence of Tommy’s documentation, and thereafter reassured the Puma Energy advisor as to the ‘conformity’ of them. This appears to be the extent of Trafigura’s due diligence of the suitability of Tommy to carry out the specialised operation. That same day, a message from Trafigura asked WAIBS to coordinate with Tommy and set out the following details of an operation to eliminate 528 cubic metres of “wastewater”:<sup>108</sup>

Would you kindly confirm that you are able to make the arrangements for the collection and removal of the wastewater and to provide suitable documentation

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<sup>105</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 51.

<sup>106</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>107</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 51.

<sup>108</sup> From: Paul Short of Trafigura, To: Mr David Adja of Waibs Shipping, Sent: August 18 2006, Subject: 20951 Agency Appointment: Probo Koala – Dumping of Slop in Abidjan, quoted in the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 26.

from the slop removal company about compliance with local regulations by environmental administration and customs on disposal of the wastewaters.<sup>109</sup>

### *The Arrival of the Probo Koala in Abidjan*

With all the arrangements made, “the receipt of the toxic waste had its starting point with the authorisation for entry into port of the Probo Koala ship”.<sup>110</sup> This authorisation was requested from the Port Abidjan Captaincy by WAIBS and was received by the Transmissions Agent of the Port in the afternoon of 18<sup>th</sup> August, who noted the mention of “wastewater”.

At the same time, Tommy attended the customs office and sought the assistance of customs officials in the waste disposal operations. The head of this office put three agents at Tommy’s disposal.

Tommy then went to the PETROCI landing stage office at around 4pm to obtain a work permit for the collection of slops from the *Probo Koala*. This office contacted Puma Energy for confirmation of the ship’s entry and of the planned operation. Puma Energy confirmed by telephone *Probo Koala*’s entry and the disposal of the slops. The Port Captain also confirmed the details. The team leader at Vridi-Gasoline customs also confirmed the disposal operation for the next morning.<sup>111</sup>

The *Probo Koala* arrived from unloading its main cargo in Nigeria at around 10am the next morning (Saturday, 19<sup>th</sup> August 2006) at the PETROCI wharf in the Port of Abidjan.<sup>112</sup> The WAIBS agent was on the wharf to supervise the reception of the waste and stated that “his role involved helping the ship’s commander in his dealings with the port authorities”.<sup>113</sup> WAIBS stated that the port services agents from the Administrations for Maritime, Health, Immigration, Pollution and for the Environment all boarded the ship.<sup>114</sup> The question as to how it was that none of these services were able to determine that the waste may have been harmful is dealt with below.

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<sup>109</sup> Ibid at page 26.

<sup>110</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 28.

<sup>111</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>112</sup> Ibid.

<sup>113</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 29.

<sup>114</sup> Ibid.

### *The Dumping of Waste around the City*

Tommy had visited the dump facility at Akuédo in the morning of 19<sup>th</sup> August, to confirm that the waste would be dumped as had been arranged on 18<sup>th</sup> August with a Pisa-Impex employee. Tommy had paid 500,000 CFA francs (about €760) in fees to Pisa-Impex (AFP 2006),<sup>115</sup> which is a private company that jointly manages rubbish with the Abidjan administration (the relationship between this corporation and the state is discussed further below). The Pisa-Impex officer present on 19<sup>th</sup> August stated that his superior had been informed and a team had been put in place in case the dump closed before the operation had been completed, but this fact has been denied by that superior when interviewed by the National Commission of Inquiry on the Toxic Waste in the District of Abidjan (the ‘National Inquiry’).<sup>116</sup>

The dumping started with the collection of material from the *Probo Koala* on Saturday, 19<sup>th</sup> August 2006 at about 1pm.<sup>117</sup> Tommy had hired around 12 tanker-trucks with drivers, and “offloaded the sulphurous sludge from the cargo vessel and deposited the waste at 18 locations around the ... city” (Milmo 2009; UNHRC 2009) during the night of 19<sup>th</sup> August and into the morning of 20<sup>th</sup> August (Eze 2008). Three of the trucks belonged to a company, Les Camionneurs, the manager of which stated that these drivers had acted without the knowledge of the company (National Inquiry 2006). Eze reports that “Tommy simply poured 528 tons of the waste at 17 public sites around Abidjan” (Eze 2008: 353). The waste contained “a mixture of petroleum distillates, hydrogen sulphide, mercaptans, phenolic compounds and sodium hydroxide” (WHO 2006). It has also been suggested by the United Nations Disaster Assessment and Coordination that more dumping of this waste may have taken place on 14<sup>th</sup> September (UNHRC 2009). It is important to note that “[n]one of the dumping sites had proper facilities for the treatment of chemical waste” (UNHRC 2009) and waste was dumped “into vegetable fields, water-courses and outside a baby-food factory” (Goode 2010).

The first tanker-truck arrived at the dump at about 7pm and left at about 8pm, after which the dump was closed by agents of the Abidjan District – some three hours earlier than usual. An agent for the city of Abidjan based at the dump told the National Inquiry that while security reasons were the official reason given for the closing of the

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<sup>115</sup> emd/sn/mh, 2006, Agence France-Presse (AFP), available at: [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/node-219298.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-219298.pdf), accessed October 2011

<sup>116</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>117</sup> Ibid.



dumpsite, this was a pretext for staff to avoid the odour emanating from the toxic waste. Despite the closure of the dump, and an inability to weigh the trucks as a result, Pisa-Impex stayed there until 3am to assist three further trucks to dump on the site.<sup>118</sup> Pisa-Impex, who had originally agreed with Tommy to calculate their fee based the total weight of the waste dumped, had to extrapolate their final price based on the weight of the first truck. Pisa-Impex say that it is after these four loads of waste were dumped that they noticed an odour from the dumped material. A fifth truck arrived at about 6am but was immobilised by an Abidjan Port spokesman (in charge of the environment) by taking the keys and some parts from the truck. A senior member of staff of Pisa-Impex intervened and returned the key and parts to the driver, who dumped his cargo upon the departure of the Abidjan Port spokesman. Tommy paid to Pisa-Impex 500,000 CFA (about €760) according to a Pisa-Impex employee's personal receipt book, 90,000 CFA (about €140) of which was paid into the Pisa-Impex bank account, the rest being distributed between Pisa-Impex employees.<sup>119</sup> This irregular accounting procedure cast a shadow on the integrity of the internal control systems at Pisa-Impex and implies poor corporate governance. Wu's (2005) cross-country analysis (which did not include Ivory Coast) argues that poor corporate governance can be a factor that contributes to the incidence of corruption.

By the dawning of the next day toxic waste had been dumped at sites all around Abidjan, as access to the city dump had been denied to drivers of the remaining truck-loads of waste and alternatives were sought: "the other drivers panned out across the city and just dumped it wherever they could" (Day 2010).

### *Health Issues*

According to the International Commission of Inquiry on the Discharge of Toxic Wastes in the District of Abidjan (the 'International Inquiry') official estimates are that 15 people died, 69 were hospitalised and over 108,000 medical consultations were sought as a result of the dumping (CIEDT 2007; also referred to in UNHRC 2009).

The National Inquiry found that:

Since Sunday August 20, the nauseating odour emanating from this waste has spread considerably and polluted the surrounding atmosphere. Because of its

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<sup>118</sup> He had already informed his Pisa-Impex superior (GC).

<sup>119</sup> Ibid.

high level of toxicity, the inhabitants of the contaminated areas had to at some points abandon their homes.<sup>120</sup>

As well as people abandoning their homes, “businesses forewent commercial earnings for a significant period of time following the contamination” (UNHRC 2009: 9).

The smell was described as, “thick and suffocating” (Eze 2008: 353) and Eze reports that in the surrounding area, “eyes were stinging, noses bleeding, stomachs, chests and ears were aching” (Eze 2008: 353). Within days thousands of people from populations local to the dumping areas started complaining of health issues and seeking medical treatment for symptoms that included: “nosebleeds” (WHO 2006) and “nausea, headaches, vomiting, abdominal pains, skin reactions and a range of eye, ear, nose, throat, pulmonary and gastric problems” (UNHRC 2009: 9). The World Health Organization argued that these symptoms were “consistent with exposure to the chemicals known to be in the waste” (WHO 2006). Tests of the ‘sludge’ confirmed that it “contained mercaptans and hydrogen sulphide, a potent poison that, particularly in confined spaces, can cause blackouts, respiratory failure and death” (Eze 2008: 353). And the National Inquiry found that “people were affected with various illnesses requiring medical assistance and hospitalisations, whilst others, sadly, died”.<sup>121</sup>

The University of Cocody study included efforts to describe the epidemiologic profile of the people poisoned and to identify their symptoms:

Of 4573 people surveyed, 4344 people, about 95%, were home during the toxic waste discharge. In all, 2369 (51.8%) had signs of poisoning. Sex, district of residence, and presence at home at the time of the discharge were all statistically related to poisoning. (Tiembre et al 2009)

Of those surveyed who sought treatment (1,297 – 64.4%), the main signs of poisoning were: respiratory problems, in particular a cough and thoracic pains; digestive complaints, diarrhoea and abdominal distension; cutaneous (pruritus) and neurological (headaches) issues (Tiembre et al 2009). The study concluded that there was;

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<sup>120</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>121</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

persistence of the symptoms among many of those poisoned more than 4 months afterwards ... [and] ... although the sites have been partially cleaned: the long-term effects on population health remain alarming. (Tiembre et al 2009)

The suppressed Minton report, released by *Wikileaks* (see Chapter 8), was commissioned by Trafigura. Based on the information provide to them by Trafigura, the report found that:

The most severe symptoms are likely to be experienced by those living and working at or near the dump sites who may come into direct contact with the liquid slops residues and high concentrates of gas. For these people, the possible consequences are burns to the skin, eyes and lungs, vomiting, diarrhea, loss of consciousness and death. (Minton 2006)

According to the UN report, “[s]uffocating odours originated from the dumping sites” (UNHRC 2009: 9) and:

Residents in areas close to the dumping sites were directly exposed to the waste through skin contact and the breathing in of volatile substances. In addition, secondary exposure reportedly occurred through contact with surface water, groundwater and eventually through the consumption of food grown on or extracted from contaminated land and water. (UNHRC 2009: 9)

With regard to operations on the *Mt Probo Koala*, the Minton report concluded that

it is not unreasonable to surmise that there was a considerable quantity of mercaptide, sodium sulphate and sodium hydrosulphide dissolved in the aqueous phase of the slops, possibly far greater that found in the refinery produced caustic waste. (Minton 2006: 4)

Following the dumping of waste from the *Probo Koala*, the Senior Examining Magistrate of the 4th Chamber of the District Council of Abidjan ordered an investigation of its consequences by the Laboratoire de Toxicologie et Hygiène Agro-Industrielle, Abidjan. As part of its investigation, numerous solid and liquid samples were taken from the bodies of 12 deceased people by forensic scientists - including from

the brain, the lungs, the heart, the liver, the kidneys, subcutaneous fat and the psoas muscle<sup>122</sup>

In March 2007, samples of organs that were likely to have been affected by hydrogen sulphide (H<sub>2</sub>S), i.e. the lungs and the brain, were analysed.<sup>123</sup> The results ranged from 2.4 to 18.28 H<sub>2</sub>S in µg/g of brain or of lungs, above the reported fatal poisoning rates of 0.8 to 0.92. The BBC argues that there “is no alternative credible source for the Hydrogen Sulphide other than the *Probo Koala* Waste”.<sup>124</sup>

Testimony from victims confirms the devastating effect of the dumping:

We live in the Deux Plateaux,<sup>125</sup> almost all my family has been contaminated. Now I carry the illness, my eyes hurt and are scratchy all the time and they are crying. My mother as well, she’s always sick. We go the hospital, but we really don’t know what she has. My older sister as well, actually all my house has been contaminated in general.<sup>126</sup>

Another victim from around the same area also complained of persisting symptoms, four years after the dumping:

Ever since that morning I have felt it. I have a headache that doesn’t stop. Then I have a chronic cough, it calms down for a bit but then it comes back again. And then sometimes my body heats up. Sometimes when I walk a bit my whole body gets tired. Ever since that day, I haven’t felt well.<sup>127</sup>

These testimonies, relayed to the author at the end of 2010, reveal how that the effects of the waste from the *Probo Koala* may have continued long after the ship left port.

### *The Departure of the Probo Koala*

WAIBS registered a ‘leaving request’ for the *Probo Koala* on the morning of Sunday, 20<sup>th</sup> August 2006 with an indicated departure time of 11pm that night. However, the

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<sup>122</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 29.

<sup>123</sup> Ibid at page 30.

<sup>124</sup> Ibid at page 30.

<sup>125</sup> Suburb of Abidjan.

<sup>126</sup> Translated from transcript of interview, Abidjan, 9<sup>th</sup> September 2010.

<sup>127</sup> Translated from video recording of interview, Abidjan, 9<sup>th</sup> September 2010.

anchor malfunctioned and was ‘blocked’ or ‘locked’<sup>128</sup> and delayed the departure of the ship and WAIBS recommended that the Ivorian Tow and Rescue (IRES) be engaged to assist and asked Puma Energy to put pressure on the port authorities to get IRES to unlock the boat’s anchor, which they did on 22<sup>nd</sup> August 2006 at about 1pm, “upon the Port’s insistence”.<sup>129</sup> The National Inquiry argued that Bombo had insisted that IRES fix the anchor so that the *Probo Koala* could leave quickly.<sup>130</sup> Here, the Port Commander is engaged in what Cohen (1993) would call implicative denial and at an organisational level the role of the *Probo Koala* is “subjected to cultural reconstruction” (Cohen 1993: 110). That is, the Port Commander employed both ‘technical and legalistic’ (Cohen 1993) terminology to justify the departure.

Before the ship’s departure, the director of the Ivorian Anti-Pollution Centre (CIAPOL) received results of the preliminary analysis of the tests of the samples and confirmed the presence of toxic waste and began the process of immobilising the *Probo Koala*. However, an oil tanker cannot easily be contained by force and the cooperation of the captain of the ship is required. The captain of the *Probo Koala* insisted that only Bombo could prevent the ship from leaving. The CIAPOL director went to the Commander of the Port’s office to ask for help in stopping the departure but the commander insisted that the state Public Prosecutor be summoned first in order to block the *Probo Koala*. The CIAPOL director asked for half an hour to do so, to which Bombo replied:

At any rate, blocking a boat is very expensive and necessitates appropriate authorisation, in so far as the ship had actually provided all of the required documents.<sup>131</sup>

The CIAPOL director then requested a meeting with the General Director of the Port Authority, Marcel Gossio. Upon arrival at the General Director’s office, the Commander of the Port, Bombo was already there. The CIAPOL director made a request to immobilise the *Probo Koala*. Gossio asked for Bombo’s opinion, who stated that “the ship was not at fault and thus could only be blocked at the request of the Public Prosecutor”.<sup>132</sup> According to the CIAPOL director, Gossio then stated “you heard it, go

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<sup>128</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>129</sup> Ibid at page 40.

<sup>130</sup> Ibid.

<sup>131</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 41.

<sup>132</sup> Ibid at page 41.

and get the DA order or there is nothing I can do”.<sup>133</sup> To which Bombo added, “at any rate the *Probo Koala* ship is already on its way”.<sup>134</sup>

The General Director of PETROCI stated that he too was “unable to block the *Probo Koala*, despite several attempts to do so”.<sup>135</sup> The General Director of PETROCI and the President of SIR Administrative Services had made repeated attempts to make contact with Gossio to ask him to prevent the *Probo Koala* leaving but were told by his personal secretary that he was unavailable. It is clear from the testimony outlined above that the *Probo Koala* – effectively a crime scene – was allowed to depart despite calls from various state agencies to block the ship as a result of the collusion between the Commander and the Director of the Port.

#### *Deviance of the Trafigura Corporation and its Subsidiaries*

Despite the evidence presented in the above section, Trafigura deny any connection between their company, the dumping and the resultant human suffering and have instituted a widespread cover-up operation (see Chapter 8 for full details). Greenpeace Nederland argues that it is “a scandal that to this day the company denies guilt and through law firms and PR agencies trying to cover up the facts” (Harjono 2009).

Trafigura’s wholly owned subsidiary, Puma Energy, also played a significant role in the dumping. The Assistant General Administrator of Puma Energy told the National Inquiry that he was not involved in the “illicit transfer of toxic waste”,<sup>136</sup> and reasoned that “Puma Energy CI’s activities ... did not have anything to do with Trafigura’s commercial operations”.<sup>137</sup> However, based on shipping agents for WAIBS’ testimony to the National Inquiry, “[the Assistant General Administrator of Puma Energy] took an active part in the phase of the illicit transfer of toxic waste which involved the Cote d’Ivoire”.<sup>138</sup> Further, as noted above, the Assistant General Administrator of Puma Energy was at the meeting with Tommy where he received a hand-written quote for the offloading of waste which he transmitted directly to Trafigura.<sup>139</sup> The National Inquiry

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 48.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Abidjan, 18/08/2006, To Jorge Marrero, Via Captain Kablan, Subject: Collection of Slops.

stated that he “played a determining role in the operations of transferring and dumping the toxic waste in Abidjan”.<sup>140</sup>

It seems clear, as Dimas argued, that “an illegal shipment of European toxic waste caused health and environmental havoc among the population” (Dimas 2006) and the health effects described above are clear violations of the human rights of the local population. The pressure this incident placed on the health facilities also had foreseeable knock-on effects, crippling an already stretched service. A University of Cocody<sup>141</sup> study reveals that “highly toxic waste products” were dumped around Abidjan on the nights of 19<sup>th</sup> to 21<sup>st</sup> August and that “numerous cases of poisoning were reported to the health authorities, who were unprepared for such a problem” (Tiembre et al 2009), and health centres were faced with double their normal workload in the weeks ahead, “such that regular consultations have all-but-ceased” (WHO 2006). In one day – 11<sup>th</sup> September 2006 – in the Cocody neighbourhood, over 1,000 people visited the local teaching hospital. And the Yopougon teaching hospital and Akouedo Health Centre reported that 600 and 300 people (respectively) were attending daily, “including many children and young infants” (WHO 2006). The WHO report stated that:

The overwhelming numbers of people seeking medical attention because of this chemical waste are severely disrupting medical services and have resulted in shortages of medicines. This has put a double burden on the already weak health system of Cote d’Ivoire. This crisis has shown that the country does not have the capacity to deal with such an emergency. (WHO 2006)

The UN Special Rapporteur’s (the Special Rapporteur) investigation uncovered deviance, without calling it such, and identified problems with “specific elements of due diligence in relation to the dumping of the waste from the *Probo Koala* in Abidjan” (UNHRC 2009: 7). These problems relate to:

- (a) Full disclosure of and clarity on the composition of the *Probo Koala*’s slop tanks and destination for disposal prior to the unloading of the waste;
- (b) Evaluation of port reception capacities and waste disposal facilities in terms of environmentally sound waste treatment prior to the unloading of the waste;

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<sup>140</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 49.

<sup>141</sup> Department of Public Health in Faculty of Medical Sciences in partnership with the Swiss Tropical Institute.

(c) Remedial action after the dumping of the waste

(UNHRC 2009: 17)

The first two issues have each attracted a label of deviance by a variety of audiences. Firstly, according to the Hulshof Commission (2006), the waste was described as a “mixture of tank washing, petrol and caustic soda”, “oily tank washings and cargo residues”, “watery cleaning liquids” and “waste from steam degreasing” (quoted in UNHRC 2009: 17). The UN report notes that upon arrival in Abidjan, Trafigura called the waste “chemical waste water” (UNHRC 2009: 17). The UN Special Rapporteur argues that this shows a lack of transparency: “the discretion with which different descriptions were used appears to be broad and not conducive to transparent decision-making on the treatment of potentially toxic waste” (UNHRC 2009: 17). The PMI product, as stated by Trafigura, “has 1500ppm Mercaptans, high Gums, H<sub>2</sub>S, Cu Corrosion and low oxidation stability”<sup>142</sup> and the Minton report adds: “the slop/residue waste discharged from the vessel is likely to have contained very high concentrations of noxious sulphur compounds” (Minton 2006: 5). It is clear from both these sources as well as from the emails analysed above that Trafigura did not consider that the slop tanks contained merely ‘wastewater’ and were denying the harmful potential of the cargo.

The second problem noted by the Special Rapporteur (UNHRC 2009) relates to Trafigura’s investigation of the suitability of Abidjan Port to receive this type of waste. Having been refused the possibility of treating the waste in Amsterdam, because of a lack of appropriate facilities, the Special Rapporteur argued that “the onus would be on Trafigura to show in what way the port of Abidjan would be equally or better equipped to process the waste” (UNHRC 2009: 17). The Basel Convention secretariat mandated mission found that the Abidjan port was, “... not equipped with the necessary facilities for the offloading and treatment of wastes covered by the MARPOL Convention” (referred to in UNHRC 2009: 17). Further to the facilities at the port, the Special Rapporteur looked too at the companies that were available to take the waste and process it: “At the time of the events, the port of Abidjan reportedly had only one experienced de-slopping service provider, the company Ivoirienne des Techniques des

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<sup>142</sup> EMAIL From: NA; To: LC, JMN; CC: JL, JT, FA, AH, GS, CD; Sent: Tue Dec 28 2005 15:11; Subject: Re: More High Sulphur from PMI.



Energies (ITE) ... [and] ... the exercise of due diligence would seem to suggest that ITE was the only viable option in this particular case” (UNHRC 2009: 17).

These failures of due diligence are recognised in the internal emails of Trafigura. As early as 27<sup>th</sup> December 2005, they admit that they don’t know much about the process and state that they “... need to list locations that allow caustic washing – if [name redacted] hadn’t informed us we still wouldn’t know about it – as I don’t think we have scratched the surface of caustic washing yet”.<sup>143</sup> And on the issue of finding an appropriate company to deal with the waste, they seem to be aware that this too will require some level of due diligence: “We should also be talking to specialist Chemical clean up companies about the process of clean up afterwards if that is the rate determining step.”<sup>144</sup> It is no surprise then, that the UN Special Rapporteur finds a lack of due diligence in hiring an inexperienced company in Abidjan to take on the waste:

Tommy ... was only created shortly prior to the arrival of the *Probo Koala* and had neither previous experience with waste treatment nor adequate facilities, equipment and expertise to treat waste. It is of concern to the Special Rapporteur that these shortcomings do not appear to have been taken into consideration by Trafigura. (UNHRC 2009)

The process of caustic washing is not new, but it is out of favour due to the hazardous waste it produces, and is banned in the US, European Union and Singapore for that reason: “Refineries used to wash with caustic soda back in the bad old days but it’s a really dirty old-fashioned process” (John Atherton quoted in TCE 2009). There are only a limited number of refineries today (as listed in the Basel/MARPOL conventions) that process this “very hazardous” waste, containing both sodium hydroxide and hydrogen sulphide (TCE 2009).

According to its International Chemical Safety Card (ICSC), sodium hydroxide causes burns when touched directly and burns the lungs when inhaled and exposure can result in nausea, headaches, and respiratory problems. The ICSC lists unconsciousness and death as possible effects of hydrogen sulphide.<sup>145</sup> The BBC claim to have seen an analysis by the Dutch authorities which reveals the toxic waste to be lethal. They quote

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<sup>143</sup> EMAIL B From: JMN; To: LC, JT, FA, AH; CC: NA, JM, JL; Sent: Tue Dec 27 2005 1:12pm; Subject: Re: More High Sulphur from PMI.

<sup>144</sup> Ibid.

<sup>145</sup> <http://www.inchem.org/pages/icsc.html>

John Hoskins from the Royal Society of Chemistry who stated that it would “bring a major city to its knees” (Jones and MacKean 2009) and report that the waste included “tons of phenols which can cause death by contact, tons of hydrogen sulphide, lethal if inhaled in high concentrations, and vast quantities of corrosive caustic soda and mercaptans” (Jones and MacKean 2009). As for the problem of ‘remedial action’ following the dumping (UNHRC 2009), it appears that no comprehensive clear up was undertaken (Tiembre et al 2009) and Trafigura denies that it has responsibility for any such operation.

The question of whether the actions by Trafigura amounted to organisational deviance goes beyond those problems raised by the Special Rapporteur’s (UNHRC 2009) report and must be fully addressed. How has the dumping breach institutionalised rules? Have the company’s “actions been labelled deviant by national and international civil society organisations”? Furthermore, have these organisations “attempted to institute sanctions” against the company? (Green and Ward 2004: 42).

### *Institutionalised Rules*

The dumping of the toxic waste has been considered by many commentators to breach European and international rules designed to avoid harmful consequences for people and the environment. The transgressions include violations of criminal law and of human rights and environmental treaties.

The main legal, institutionalised rules come from international treaties, regional (African) treaties, European Directives and local domestic law. Eze (2008) argues that the incident in Abidjan “constitutes a litmus test for the existing international instruments, revealing their strengths and weaknesses” (Eze 2008: 351). In this case the results of the litmus test showed mainly weaknesses, and as argued by Dimas, “[s]uch highly toxic waste should have never left the European Union. European and international laws were broken” (Dimas 2006).

According to a BBC legal team,<sup>146</sup> the waste produced by the onboard caustic washing fell within Regulation 3(1)(A) of Marpol<sup>147</sup> Annex II (as interpreted under Appendix 1

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<sup>146</sup> Acting in defence of a libel claim by Trafigura.

<sup>147</sup> Marpol (73/78) is the International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978. ‘Marpol’ is short for ‘marine pollution’.

of Annex 2) and Regulation 5 of Marpol Annex II.<sup>148</sup> Regulation 5 requires the disposal of Regulation 3(1)(A) waste to a suitable reception facility and no such facility was available in Abidjan. The BBC further argued that the waste was covered by the Basel Convention<sup>149</sup> under Annex 1,<sup>150</sup> as it had properties as listed in Annex III.<sup>151/152</sup> No notice of the importation of the presence of waste was given under Article 6 of the Basel Convention, and was therefore illegal.<sup>153</sup> The National Inquiry argued that the waste should have received special treatment under Article 13.<sup>154</sup> The Basel Convention had been specifically designed to prevent incidents such as the one under study here, specifically to prevent transfer of hazardous waste from developed to less developed countries, and the preamble to the treaty states that the signatories are “Concerned about the problem of illegal transboundary traffic in hazardous wastes [and] the limited capabilities of the developing countries to manage hazardous wastes.”<sup>155</sup>

Similarly, no notice of the importation was given as required by Article 9 of the Bamako Convention,<sup>156</sup> and was therefore illegal.<sup>157</sup> The case has also shown failures of the institutional and operational systems implemented by these international treaties and designed to prevent the dumping of toxic waste. For example, under the Basel regulations, the German authorities should have been notified of the ship’s passage through its waters (Knauer et al 2006).

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<sup>148</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 25.

<sup>149</sup> Ivory Coast signed the Basel Convention in 1994 and ratified it with Decree 94-327 of 9<sup>th</sup> June 1994.

<sup>150</sup> E.g. Y8 and/or Y11 of Annex 1 of the Basel Convention.

<sup>151</sup> Code H6.1 and/or H11 and/or Annex VIII Code A3010.

<sup>152</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 25.

<sup>153</sup> Ibid.

<sup>154</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 43.

<sup>155</sup> The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Preamble, at page 4.

<sup>156</sup> Ivory Coast ratified the Bamako Convention in 1994. The Convention was negotiated by 12 nations of the Organization of African Unity, came into force in 1998 and was designed to address the failures of the Basel Convention.

<sup>157</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 25.

The dumping would have been illegal in Europe under Council Directive 91/689/EEC on hazardous waste as amended by Commission Directive 94/31/EC<sup>158</sup> and Council Directive 99/31/EC of 26 April 1999 on the landfill of waste. While these directives have no direct legal effect in Ivory Coast, they would be well known to Trafigura which has an extensive presence in Europe. The objectives of these directives to prevent harm would also be well known to Trafigura executives and any violation would be a clear breach of institutionalised rules.

Domestic, Ivory Coast Law S8-651 of 1988 prohibits the importation, deposit or storage of industrial toxic waste.<sup>159</sup> This law was clearly violated and the mechanism by which the relevant authorities did not carry out their duties is examined below.

On the institutional level of analysis, the export and movement of toxic waste around the world illegally is a “thriving business” (Eze 2008: 351) and an “infamous trade” (Eze 2008: 351), and Dimas estimates that “up to half of the sea transports of hazardous materials could be illegal” (quoted in Helsingin Sanomat 2009). Eze argues that the incident also shows “a drastic lack of capacity of a large number of countries to manage waste in an environmentally sound manner” (Eze 2008: 351). The evidence suggests that opportunities to commit these types of organisational crimes are plentiful and that the legal enforcement of constraints and controls are deficient.

To summarise, the deviant and illegal acts of Trafigura include: forgery of documents; concealing the nature of the waste in Amsterdam, Lagos and Abidjan; attempts to dump toxic waste in Nigeria (and the proposed use of a barge from Togo returning to Lagos under a different name – see below); employing the services of Tommy when the company clearly had no experience in dealing with toxic waste, and requesting false invoices from Tommy; and quickly departing the port to avoid exposure to censure or sanctions once the dumping had taken place.

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<sup>158</sup> Repealed by Directive 2008/98/EC on waste with effect from 12<sup>th</sup> December 2010.

<sup>159</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 25.

Compagnie Tommy SARL registered its company statutes in Abidjan on 24<sup>th</sup> May 2006 and they contain Tommy's objectives,<sup>160</sup> which make no mention of waste management. The company's route into the waste management business was through a series of licences and authorisations by multiple sub-units of the Ivorian state. On 9<sup>th</sup> June, Tommy submitted an application for a maritime chandler licence to the General Direction of Maritime and Port Affairs. On 23<sup>rd</sup> June, Tommy's licence was approved and transmitted to the Transport Minister, who signed it on 12<sup>th</sup> July 2006. On 20<sup>th</sup> July, Tommy applied to the General Director of the Port Autonome of Abidjan (PAA) for authorisation to collect and remove oil and waste from ships and on 9<sup>th</sup> August was granted the authorisation to be in practice in the Abidjan Port by Bombo, the Port's Harbourmaster Commander.<sup>161</sup> The National Inquiry felt that Tommy was an organisation specially incorporated to receive this toxic waste and argued that:

The speed with which Tommy's license and authorization to practise in the port was obtained is unsettling and appears to be a fraudulent collusion ... [and]... the Tommy Company had all the appearances of a cover company created specifically for the circumstance ... and ... it is undeniable that Ugborugbo was the principal author of the toxic waste dumping in the Abidjan district.<sup>162</sup>

Before the clean-up operation ordered by CIAPOL on 23<sup>rd</sup> August, Tommy – at the request of Pisa-Impex – poured 96 litres of cresyl-pure over the waste at Akuédo, “in an attempt to dissipate the smell”.<sup>163</sup> This was repeated on 24<sup>th</sup> and 25<sup>th</sup> August and can be viewed as an attempt to hide the waste itself, literally to cover it up. Once this operation had been completed, Puma Energy, WAIBS and Tommy met and Puma Energy and Tommy were asked to provide a bill for 10 million CFA for work done and provide another one for 100 million CFA, “in order to conform with international standards”.<sup>164</sup> This fake invoice was an attempt to feign conformity with the law and can be understood as a *prima facie* indication of criminal behaviour.

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<sup>160</sup> The refuelling and maintenance of ships, the provision of mechanical, electric, refrigerating and miscellaneous equipment, commercial performance, importation, exportation and commercialisation of various products, construction and restoration of buildings, operation of all industrial and commercial buildings; according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>161</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid at page 38.

<sup>164</sup> Ibid.

Pisa-Impex was founded in the 1990s to lease construction plant equipment and is headquartered in Yopougon, a neighbourhood of Abidjan. In 1999 and 2002, the company was awarded the contract for the management of the Akuédo dump.<sup>165</sup> Without any sufficient controls or oversight put in place by the contract, Pisa-Impex was able to contract for private waste to be dumped at Akuédo and the National Inquiry found that;

... the Pisa-Impex agents who manage the Akuedo dump were in grave violation of the public service conceding contract clauses and without any control from the Abidjan District. The Commission also notes that the company Pisa-Impex has no expertise to manage a dump like Akuedo.<sup>166</sup>

Tommy paid 500,000 CFA to an agent of Pisa-Impex who said he used half to repair a damaged truck and up to 200,000 to each of the other two Pisa-Impex agents present that day.<sup>167</sup>

The criminogenic relationships between Trafigura and its subsidiaries and subcontractors are clear. The oil trader used its local subsidiary and agents to find a solution to a problem that had been pre-occupying them for months and they colluded with the larger organisations to commit the crime.

As outlined at the beginning of this chapter, the crimes under study in Ivory Coast are not limited to Trafigura and its subsidiaries and agents; the state's role is crucial in understanding the mechanics of a state-corporate crime. The waste was repelled from the states of Estonia and Nigeria before arriving in Ivory Coast, where it was apparently welcomed. Trafigura avoided dumping in Nigerian waters because, as stated in an email of 10<sup>th</sup> August, to do so would have had "potential implications on us";<sup>168</sup> meaning that the effects of the waste on the environment or the local population could be negatively imputed to Trafigura. When it became clear that the company receiving the waste was not happy to take delivery in international waters, Trafigura stated that "[i]n this

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<sup>165</sup> Ibid.

<sup>166</sup> Ibid at page 70.

<sup>167</sup> Ibid.

<sup>168</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 15.

instance due to the nature of the slops on board I would prefer the slop to be discharged in a different port other than Lagos if possible”.<sup>169</sup> This reveals that Trafigura was concerned that dumping in Nigeria could be traced back to the company and would have implications for their business. Furthermore, Trafigura’s CEO reportedly suggested that they try to smuggle the waste into Nigeria: “I spoke to [Trafigura’s CEO] ... go to Lome [sic], charter a barge and bring it back to Nigeria for Daddo [Marine Services] under a different name.”<sup>170</sup> Nigeria is Africa’s largest oil producer and one of the world’s largest oil producers<sup>171</sup> and the company would not want to sully its relationship with the Nigerian state. The Nigeria oil industry has “received considerable attention in academic literature or from human rights organisations” (Green and Ward 2004: 30). A less commercially important and more vulnerable state, Togo, was chosen as the next target for the waste and an email dated 15<sup>th</sup> August stated, “see if they can arrange for a barge to pick up the slops, preferably offshore Lome [sic] or as far as possible offshore Nigeria and within international waters”.<sup>172</sup> Trafigura stated a preference for the security provided by the legal regime applied to international waters, again indicating an awareness that their actions could be labelled deviant. The reason that international waters would be a preferable location to transfer the waste is that the local domestic laws of Nigeria would not apply, implying that the corporation was aware that what they were doing was likely to be illegal.

An email from Comoditex<sup>173</sup> to the captain of the *Probo Koala* dated 15<sup>th</sup> August stated, “they will only be able to arrange for a barge to de-slop in Nigerian waters ... He will also ensure that we get proper paperwork for receipt of slops.”<sup>174</sup> The next day, 16<sup>th</sup> August, an email outlines that if the waste must be offloaded by Daddo Maritime Services, then Trafigura must receive documentation to show that the cargo had been cleared:

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<sup>169</sup> Ibid at page 15.

<sup>170</sup> Ibid at page 16.

<sup>171</sup> <http://www.bbc.co.uk/news/world-africa-13949550>, accessed October 2011.

<sup>172</sup> Claim No. HQ 09X02050, at page 16.

<sup>173</sup> A commodities trading firm, headquartered in Dubai.

<sup>174</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 16.

Understand and share your concerns about doing this in Nigerian waters. If we can not manage to convince Daddo to do it outside Nigeria then please make sure that Daddo understand that we do not want any issues and proper clearances should be obtain [sic] in order to avoid any implications for Trafigura or the vessel.<sup>175</sup>

However, Trafigura's CEO was not happy with such an operation as it could potentially be traced back to Trafigura and it is called off later that day:

Dude, pls call CD [Trafigura's CEO]. I spoke to him yesterday and he said no to any such operation in Nigeria.<sup>176</sup>

The following day, Trafigura contacted its subsidiary in Ivory Coast to arrange disposal of the waste. But what is it about the character of the Ivorian state that allowed the waste to be dumped there when it had proved so difficult elsewhere? The next section will look at the deviance of the Ivorian state.

#### *Deviance of the Ivorian State*

The state of Ivory Coast has a history of neopatrimonial rule since independence, moving from the stability and legitimacy enjoyed by the long-standing leader Houphouët-Boigny to the more unstable, 'predatory' type of state embodied by Laurent Gbagbo's administration. The Ivorian state is fragmented, in the sense that constituent sub-units do not work in any coherent manner or follow shared goals.

Green and Ward argued that any state "does not always or even in the majority of cases act as a unitary force" (Green and Ward 2004: 5). This was undoubtedly true of the aftermath of the dumping. The main governmental sub-units involved in the present analysis include health, security and customs services and related government departments.<sup>177</sup>

The director of the National Institute for Public Hygiene told the National Inquiry that his three-person team<sup>178</sup> boarded the *Probo Koala* on 19<sup>th</sup> August and verified the ship's

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<sup>175</sup> Ibid at page 16.

<sup>176</sup> Ibid at page 16.

<sup>177</sup> The Office of the President, Office of the Prime Minister, Ministry of the Environment and Forestry (including CIAPOL), Ministry of Transport, Ministry of Mines and Energy, Abidjan Port Authority, Governor of the District of Abidjan, and the parastatals PETROCI and SIR.

<sup>178</sup> A team leader, a state registered nurse and a driver.



documentation and checked its general condition. He states that they found that nothing was out of the ordinary and “neither did they smell anything in particular”.<sup>179</sup>

The Port’s Police Commissioner told the National Inquiry that the police agents who boarded the *Probo Koala* reported that nothing was out of order.

The director of Territory Surveillance stated that his agents boarded the ship and checked the ship’s papers, which declared only slops and that their responsibility was thus limited to operations related to unloading slops. He stated that his officers “were never informed of the dangerous nature of the *Probo Koala*’s cargo”.<sup>180</sup>

The head of Abidjan’s Port Surveillance Department stated that his department does not intervene with transactions unless there are foodstuffs involved.<sup>181</sup>

The commander of the Port Security Sector of the National Police stated that since 2002, following a meeting at the General Secretariat of the Port, his agents are no longer authorised to board ships.<sup>182</sup>

The director of Navigation and the Coastguard stated that the General Director of Maritime and Port Affairs suspended the Maritime Police’s activities<sup>183</sup> in 2004 in order to avoid ‘agent abuse’, and therefore his agents will only board a ship to locate defects in the ship and to check any equipment’s suitability in accordance with International Maritime Organization standards. In this case, his agents “did not detect any defects likely to cause any accidents in the sea”.<sup>184</sup> And he stated that his department was “not alerted to any particular security or pollution problems”.<sup>185</sup> This exchange suggested that the corruption (or perceived corruption) of the Maritime Police created a situation which precluded them from effectively carrying out their duties.

The oil storage facility of Abidjan<sup>186</sup> is supplied by pipeline from the nearby oil refinery of Abidjan<sup>187</sup> and by ship via the PETROCI landing stage in the Vridi Canal. A Vridi

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<sup>179</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 30.

<sup>180</sup> Ibid at page 30.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Director of Maritime and Port Affairs note no. 10021/MEMT/DGAMP of 14<sup>th</sup> September 2004.

<sup>184</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 31.

<sup>185</sup> Ibid at page 31.

<sup>186</sup> Terminal Pétrolier d’Abidjan-Vridi or Abidjan-Vridi’s Oil Terminal (TPAV).

<sup>187</sup> Société Ivoirienne de Raffinage (SIR).

customs officer told the National Inquiry, “he smelt a strong odour which triggered a series of sneezes. He thus asked Ugborugbo if the products were dangerous. Ugborugbo reassured him that the experts’ analyses showed that the cargo presented no danger.”<sup>188</sup> Vridi customs argue that they couldn’t have known the nature of the materials being pumped from the ship to the trucks and their “involvement was limited to control of the quantity of products discharged”.<sup>189</sup> This contrasts to the reaction of the Amsterdam personnel, who raised the issue of toxicity when they smelled the waste (UNHRC 2009).

Customs services are supposed to sit on a Licence Commission meeting when granting a licence like that given to Tommy. Despite not being invited to any such formally prescribed meeting, customs services granted the probationary licence<sup>190</sup> to allow Tommy to act as “maritime Chandler specialised in refuelling, maintenance and refuelling of ships in the Port of Abidjan”.<sup>191</sup> Tommy submitted its request for a maritime Chandler’s licence on 7<sup>th</sup> June 2006 and it was granted on 12<sup>th</sup> July 2006.<sup>192</sup>

The Customs General Director told the National Inquiry that he had, “well before the arrival of the *Probo Koala* ship, prohibited his agents from going on board oil tankers and ships which did not unload merchandise ... to avoid bothering the ships’ crews”.<sup>193</sup> This seriously hampered customs’ ability to stop the importation of toxic waste and the customs services’ claim to have not found out about the toxic waste until after the *Probo Koala* had departed. This shows some serious problems with their intelligence collection operations, and the National Inquiry found “a malfunctioning of the Custom Administration ... contributed to the dumping of toxic waste in the Abidjan District”.<sup>194</sup>

In the Ivorian Environmental Code, ‘environment’ is defined as:

all of the physical, chemical and biological elements and all the social, economical, moral and intellectual factors susceptible to having a direct or

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<sup>188</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 32.

<sup>189</sup> Ibid at page 31.

<sup>190</sup> Decree 169/MT/DGAMP/DTMFL of 12<sup>th</sup> July 2006 according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 58.

<sup>191</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 58.

<sup>192</sup> Decree no. 2006-169/MT/DGAMP/DTMFL; see the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at pages 18 and 20.

<sup>193</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 58.

<sup>194</sup> Ibid at page 59.

indirect, immediate or in time, effect on the development of the atmosphere, living beings and human activities.<sup>195</sup>

The Department for the Environment and Waters and Forests administers the Ivorian Anti-Pollution Centre (CIAPOL) and the Minister for the Environment told the National Inquiry that the Director General of PAA refused his agents a presence at the port. This was the same problem experienced by the Maritime Police and suggests a fiefdom mentality as the port authorities are very protective of the territory and jurisdiction of their governmental sub-unit. The Minister for the Environment also stated, as did the Director of CIAPOL and the Head of the Port Authority Environmental Department, that environmental officers do not board ships.<sup>196</sup> The Minister, on 21<sup>st</sup> August, set up a crisis committee and instructed CIAPOL to investigate the smell pervading the city. By 25<sup>th</sup> August, the Minister felt that there had been a case of illegal toxic waste trafficking and informed the Prime Minister who ordered and sat on an Inter-ministerial Committee. On 29<sup>th</sup> August, the Minister formally informed the Government Council of the dumping.<sup>197</sup> While the Minister belatedly reacted to the dumping and violation of the Environmental Code (from where he gets his obligations), he failed to prevent such violations and the National Inquiry argues that “the Environmental Minister did not use all the appropriate means that should have allowed him to undertake controls on the *Probo Koala* when it arrived at the Abidjan Port”.<sup>198</sup>

On 21<sup>st</sup> August, CIAPOL in collaboration with the Central Environmental Laboratory and the Antipollution Police Services Unit, traced the toxic waste to the *Probo Koala* but were refused boarding by its crew. They did, however, take samples of the toxic waste that had been spilled on the wharf in the course of the pumping from the ship to the trucks. Later that day, CIAPOL issued a formal notice to the *Probo Koala*,<sup>199</sup> “to immobilise the boat until the nature of its cargo had been determined”.<sup>200</sup> The notice was sent to WAIBS as well as the Port Authority, the District of Abidjan and to the

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<sup>195</sup> Article 1 of Law 96-766 of 3<sup>rd</sup> October 1996, as quoted in the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>196</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid at page 62.

<sup>199</sup> Under Article 26 of Decree no. 98-43 of 1998 regarding Graded Facilities for the protection of the environment, according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>200</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 36.

Ministry of the Environment but none of these government agencies prevented the ship from leaving port (whether they were in a position to do so or not).

On 20<sup>th</sup> August, Bombo was notified of the odour of the waste from the *Probo Koala*. In the morning of the 21<sup>st</sup> August, Gossio telephoned Bombo to enquire about the odour but Bombo “did not judge it necessary at the time” to inform Gossio, who was informed at a meeting with CIAPOL and Bombo the next day. The National Inquiry concluded that the port authorities were ‘accomplices’ in the dumping and in the speedy departure of the *Probo Koala*.<sup>201</sup>

The operating licence issued by the Department of Mines and Energy to Puma Energy (Trafigura’s subsidiary) was granted illegally.<sup>202</sup> Tommy’s request for an operating licence was granted without reference to the Licence Commission<sup>203</sup> and the General Director of Maritime and Port Affairs justified this breach of the law as a measure to avoid petitioners’ direct contact with the Prime Minister’s office as a procedural appeal,<sup>204</sup> and the National Inquiry concludes that: “This argument cannot succeed for one cannot rely on a violation to obstruct a route of appeal.”<sup>205</sup> The licence granted legitimised Tommy as an organisation competent to receive the hazardous waste, and the circumnavigation of administrative rules in awarding the licence was a determining factor in the dumping.

The District of Abidjan had responsibility for environmental protection and the management of waste<sup>206</sup> and it conceded management of the Akuédo dump to Pisa-Impex, a private company. During his hearing in front of the National Inquiry, the Governor of the Abidjan District stated: “as a District, we are not concerned with the management of industrial waste”.<sup>207</sup> However, the 2003 law which transferred the state’s responsibilities to the territorial authorities<sup>208</sup> does not make a distinction between types of waste, and the National Inquiry argues that the Governor’s statement

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<sup>201</sup> Ibid.

<sup>202</sup> Under Article 2 of Law 92-469 of 30<sup>th</sup> July 1992, according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>203</sup> As required under Article 4 of Decree no. 97-615 of 16<sup>th</sup> October 1997.

<sup>204</sup> Provided for under Article 8 of Decree no. 97-615 of 16<sup>th</sup> October 1997.

<sup>205</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 44.

<sup>206</sup> Under Law 2001-478 of 9<sup>th</sup> August 2001, according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>207</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 66.

<sup>208</sup> Article 7 of Law no. 2003-208 of 7<sup>th</sup> July 2003.

“has no legal founding”<sup>209</sup> and the Governor contributed to the dumping and “in no way carried out the mission to protect the environment”.<sup>210</sup>

PETROCI,<sup>211</sup> the parastatal in charge of Ivory Coast’s oil and gas industry who ran the berth where the *Probo Koala* docked, did not have the power to refuse the docking or unloading of the ship as all of the required paperwork was produced on demand. The General Director of PETROCI considered this a ‘loop-hole’ and has written new conditions for using the wharf.<sup>212</sup>

### *Conclusion*

This chapter addressed the question of whether the actions by Trafigura amounted to organisational deviance and catalogued a list of elements of the dumping that has been labelled as deviant by a social audience. The dumping of the toxic waste has been considered by many commentators to breach European and international rules, including violations of criminal law and of human rights and environmental treaties. The Hulshof Commission concluded that the reloading of waste back onto the *Probo Koala* in Amsterdam was against environmental regulations (Hulshof Commission 2006). Furthermore, the company would have been well aware that Ivory Coast lacked the facilities to treat the waste. The terms of the hand-written ‘quote’ provided by Tommy corroborate this, a view which was supported by the National Inquiry (2006). The UN Special Rapporteur too found that there was a lack of due diligence in hiring Tommy. The National Inquiry found that Trafigura’s wholly-owned subsidiary, Puma Energy, took an active part in the illicit transfer of toxic waste<sup>213</sup> and that Puma Energy received the hand-written quote for the offloading of waste from Tommy, which was transmitted directly to Trafigura.<sup>214</sup> The resultant detrimental health effects of the dumping have also been outlined by international civil society actors (Dimas 2006; WHO 2006).

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<sup>209</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 66.

<sup>210</sup> Ibid at page 66.

<sup>211</sup> PETROCI owns a 47.3% share in Société Ivoirienne de Raffinage (SIR) (Simple Oil Refinery in Abidjan) [<http://www.mbandi.com/copt.htm>].

<sup>212</sup> In a letter of 22<sup>nd</sup> August 2006; addressed to SIR, SMB, Customs, the Port Autonome in Abidjan and Puma Energy.

<sup>213</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 49.

<sup>214</sup> Abidjan, 18/08/2006, To Jorge Marrero, Via CaptnKablan, Subject: Collection of Slops.

The deviance of the Ivorian state has also been identified by social audiences, particularly the National Inquiry. The operating licence issued to Puma Energy was granted illegally.<sup>215</sup> Tommy's request for an operating licence was granted without reference to the Licence Commission.<sup>216</sup> This licence legitimised Tommy as an organisation competent to receive the hazardous waste, when it was incompetent to do so. The authorisation allowing the *Probo Koala* to dock was granted by Bombo who, the National Inquiry argued, had insisted (after the dumping) that the ship was not at fault and organised for the *Probo Koala* to leave port quickly.<sup>217</sup> The Ivorian state was also heavily criticised for operating a weak regulatory system.

The National Inquiry found that the dysfunctional customs administration contributed to the dumping.<sup>218</sup> The Department for the Environment and CIAPOL's agents, as well as the Maritime Police, were refused a presence at the port and this prevented them exercising the requisite control. The National Inquiry argues that the Minister for the Environment failed to prevent violations of the Ivorian Environmental Code. The National Inquiry argues that the Governor of the Abidjan District contributed to the dumping and "in no way carried out the mission to protect the environment".<sup>219</sup> The collusion between Trafigura and the Government has been highlighted in this chapter through the granting of licences illegally and through unfettered access to the port of Abidjan, and the National Inquiry concluded that the port authorities were 'accomplices' in the dumping and in the speedy departure of the *Probo Koala*.<sup>220</sup>

Lasslett argues that any crime's 'phenomenal nature', "sets a gradient of difficulty, which will shape the practice's amenability to exposure and analysis" (Lasslett, 2012a). This is true of the dumping, which presented multiple barriers to analysis: scientific – due to the complex chemical composition of the waste; medical – determining the health impact of the waste required specialist knowledge; legal – the corporate veil of a close company is very difficult to penetrate; and geographical – the location of the crime in a poor post-conflict West African country made access to information difficult. These difficulties were compounded by the reaction of Trafigura to public scrutiny. The

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<sup>215</sup> Under Article 2 of Law 92-469 of 30<sup>th</sup> July 1992, according to the report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

<sup>216</sup> As required under Article 4 of Decree no. 97-615 of 16<sup>th</sup> October 1997.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid at page 59.

<sup>219</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 66.

<sup>220</sup> Ibid.

corporation engaged in widespread cover-up and public relations management activities, making it more difficult to collect and analyse data. But what have been revealed by the available data are the clear breaches of norms by Trafigura and the Ivorian state. The task now is to quantify civil society's reaction to the state-corporate crime.

## Chapter 6 – Situating Domestic NGOs within the Topography of Resistance

### *Introduction*

The analysis in this chapter is based on interviews with four domestic human rights NGOs. These organisations are a representative sample of the civil society sector in Ivory Coast concerned with human rights. The three major human rights NGOs in Ivory Coast are: Action pour la Protection des Droits de l'Homme (APDH), Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Mouvement Ivoirien des Droits Humains (MIDH). Club Union Africaine Côte d'Ivoire (Club UA) was identified as the most important of the smaller organisations. Together APDH, LIDHO, MIDH and Club UA represent the vanguard of Ivorian civil society concerned with human rights abuses. Based on the participant selection methodology (see Chapter 2 for details), these organisations would be expected to be an important measure of the capacity of civil society in Ivory Coast to resist state and state-corporate crime.

### *Organisational Resources*

Lasslett argues that a determination of the capacity of civil society organisations to resist state crime “must take into account the movement’s class composition, the institutional pockets of opposition from which it can draw support, and the movement’s capacity to employ the right balance of tactics” (Lasslett 2012: 4). Ndegwa’s (1996) study of African NGOs reaches a similar conclusion in relation to resistance:

... for NGOs and other organizations in civil society to advance democratization (for instance, through successful opposition to state control of civic activities), four conditions must obtain: organization, resources, alliances, and political opportunity. (Ndegwa 1996: 1)

The following analysis begins by looking at the composition, institutional resources and internal processes of the NGOs, before looking at external networked links to a wider civil society and the state.

LIDHO employs three people; the permanent secretary, the guardian/watcher and someone who runs errands for the organisation. LIDHO claims to have about 3,000 voluntary workers in 56 sections around the country.<sup>221</sup> This appears to be a high

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<sup>221</sup> Interview, Abidjan, September 2010 (LIDHO 2010).



number, when other organisations claim serious personnel problems. However, the LIDHO website does list email address for some 50 sections<sup>222</sup> in the interior of the country, lending weight to the claim with respect to the number of sections at least – but it is unlikely that an organisation of this size and capabilities could effectively sustain 3,000 volunteers. MIDH staff are all said to be voluntary workers. However, there are five persons to whom they “pay concessions to be permanent at work”.<sup>223</sup> MIDH boasts about 400 members; about a hundred of these are “really committed to the organisation”.<sup>224</sup> APDH has four salaried staff: the secretary, the accountant, the cleaner and someone to run errands. They have 20 permanent volunteers.<sup>225</sup> Club UA has more than 200 members and ten permanent staff, five of which are salaried – the accountant, the secretary, the vice-secretary general, the staff member responsible for elections and the staff member in charge of conflict related to land – and the rest are paid expenses for transport.<sup>226</sup> The main four human rights NGOs therefore employ a total of only 17 salaried staff – of which only half are involved in human rights activities, the rest being accountants, cleaners or errand runners. The number of salaried staff across the sector is low in a country of 20 million people, but is relative to an official employment rate of 4% (IRIN 2005).

During interviews, this problem of personnel was a recurring theme. APDH stated that it was their main problem; and it is not just a case of finding the funding, as they felt that “it’s quite difficult to find volunteer workers”.<sup>227</sup> Even when funding is forthcoming, LIDHO said that funds put at the organisation’s disposal are strictly targeted to specific projects and cannot be used to pay salaries, rent or transport<sup>228</sup> (this problem of project-based funding is discussed below). Club UA sees two major inter-linked problems facing NGOs in Ivory Coast today: training and funding. Without trained personnel you cannot develop sophisticated project management strategies to attract funding. And even if you do manage to attract funding, you don’t have the personnel with the competence to deal with it.<sup>229</sup> This problem of unskilled staff is related to the inadequacies of the institutions of the Ivorian state. Education is

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<sup>222</sup> [http://lidho.org/section\\_interieur.html](http://lidho.org/section_interieur.html), accessed November 2011.

<sup>223</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>224</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>225</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>226</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>227</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>228</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>229</sup> Interview, Abidjan, September 2010 (Club UA 2010).

underdeveloped, with illiteracy standing at about 50%<sup>230</sup> and the average length of schooling is reportedly six years (US CIA 2011).

When compared to Trafigura, the human resources of these NGOs are limited. Trafigura can offer attractive wages to highly educated individuals. The local NGOs have difficulty in finding and hiring skilled staff due to both a lack of funds and suitable candidates. This imbalance suggests that the local NGOs would struggle to meet the demands of sanctioning and censuring large-scale state-corporate crime in the face of significant corporate power.

#### *Data Collection and Dissemination Methods of Domestic NGOs*

The NGOs' lack of capacity is further exacerbated by the fact that their offices are all centralised, based on the south coast of the country. There is a significant urban-rural divide, compounded by infrastructural deficiencies. There is also a north-south divide, the country having been effectively partitioned for years. Making contact with the NGOs would be very difficult from outside of Abidjan – there is a limit to the advocacy and support that can be provided via the underdeveloped mobile telephone network. The small size of the organisations, along with their apparent financial and human resource constraints, limits their capacity to send personnel into the interior of the country to serve individual victims of human rights abuses outside of Abidjan.

Similarly, it is not easy for these NGOs to get their message across electronically to rural populations. While most Ivorian civil society organisations or individuals are not online, and internet connectivity is very low,<sup>231</sup> the NGOs' websites give an indication of the communication structures of the organisations. APDH had a website ([www.apdh-ci.org](http://www.apdh-ci.org)) but it was not working as at August 2011. MIDH say they have a website, but the president did not know the address.<sup>232</sup> LIDHO have a website ([www.lidho.org](http://www.lidho.org)), but "that needs to be updated";<sup>233</sup> and Club UA have a website ([www.clubua-ci.org](http://www.clubua-ci.org)) with about eight pages, but about 50% of these have no content.<sup>234</sup>

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<sup>230</sup> According to data from UNICEF's Multiple Indicator Cluster Survey, reported in the United Nation's Development programme – Human development indices; available at [http://hdr.undp.org/en/media/HDI\\_2008\\_EN\\_Tables.pdf](http://hdr.undp.org/en/media/HDI_2008_EN_Tables.pdf), accessed November 2011.

<sup>231</sup> Reportedly at 4.5% of the population (2011). Source: <http://www.internetworldstats.com/stats1.htm#africa>

<sup>232</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>233</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>234</sup> Interview, Abidjan, September 2010 (Club UA 2010).

A lack of modern communication tools severely hampers an organisations' ability to censure the criminal actions of the state and large corporations by disseminating information on abuses to domestic and international audiences. The domestic audiences that could be reached by online campaigning would be predominantly city elites and the educated middle class as internet connections are relatively expensive at US\$20 per month.<sup>235</sup> Improved modern communications structures would assist the NGOs in getting their message across to the general public, as well as provide a platform for reports and statements that censure the deviant actions of states and corporations. Better communications would also facilitate collaboration between NGOs.

### *Decision-Making Structure*

The following section analyses how decisions are made within the organisations, and by whom. It also looks at the accountability of the organisations as it is important to understand any restraint on individuals in the organisation to act towards stated goals. The issue is not just whether the organisations are transparent and can be held to account, but also a question of who can hold an organisation to account – often determined by the funding streams that the organisations rely on for survival. Decision making and accountability procedures impact upon the organisations' capacity to resist state-corporate crime. The speed at which an organisation can gauge and respond to a major human rights event is an important measure of resistance, as is their capacity to critically reflect on this response and modify future strategy.

The domestic NGOs deal with complaints from individuals, as well as proactively designing projects to promote human rights and democracy. APDH state that they receive complaints of human rights abuse from “two or three persons per day and throughout the month it may be near 50 persons”.<sup>236</sup> They also run seminars every three months in the interior of the country, which attracts about 50 attendees each time.<sup>237</sup> Yearly, MIDH provide services for 50 to 60 individuals.<sup>238</sup> These individuals are dealt with on a case by case basis, and any decision to assist is based on the ‘merits’ of each case. No criteria were outlined for assessing the merits influencing decisions to take on cases. This creates the possibility of clients being arbitrarily refused assistance and

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<sup>235</sup> International Telecommunication Union, price basket for internet is calculated based on the cheapest available tariff for accessing the internet 20 hours a month (10 hours peak and 10 hours off-peak), <http://www.nationsencyclopedia.com/WorldStats/ADI-price-basket-internet.html>

<sup>236</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>237</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>238</sup> Interview, Abidjan, September 2010 (MIDH 2010).

could expose the client recruitment process to claims of discrimination on ethnic or gender grounds, clientelism and the misplacement of resources on cases that the organisation does not have the capacity to effectively deal with.

With respect to project work, NGOs in Ivory Coast must focus on a discrete range of abuses so that limited resources can be used effectively. The decision-making process for taking on projects and individual clients is important as it determines where the energies of the organisation are focused and which human rights abuses may be neglected. Based on an apparent lack of action in the Trafigura case this decision-making process was explored, as well as any assessment and auditing mechanisms in place.

The question asked – “Who decides what projects to work on?”<sup>239</sup> – was one of the most challenging to get an answer to and required rephrasing and/or repeating during the majority of interviews in Abidjan. The problems stemmed from, in some cases, a misunderstanding of the question – one NGO responded, “We do”<sup>240</sup>, referring to their own organisation. All NGOs interviewed eventually answered that their management board makes all decisions as to which project they will undertake, and this decision is usually made democratically. However, the management boards do not propose projects and can only decide whether to pursue a project recommended by a special department of the NGO or its president. The decision on which projects to roll out will necessarily be influenced by the likelihood of receiving funding (the problem of project-specific funding is discussed below).

APDH’s decisions as to which projects are pursued is made by a board, which consists of ten members: the president, two vice presidents, the secretary general, the secretary general for finance, an organiser, the secretary in charge of communication, the secretary in charge of women and children, the secretary in charge of training and projects, and the secretary in charge of social affairs. Decisions are reached by consent, and voting if necessary: “generally speaking it is by consent and it is rare that they go to voting”.<sup>241</sup> MIDH have a similar five-person board; it is presided over by the vice-president (in charge of projects) and includes the president, the staff member in charge of investigations, and the two staff members in charge of projects. The staff member

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<sup>239</sup> Interviews, Abidjan, September 2010.

<sup>240</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>241</sup> Interview, Abidjan, September 2010 (APDH 2010).

who proposed and drafted the project is also in attendance to take part in the discussion. They discuss the project and decide whether to proceed. When asked whether all board members must agree to proceed with a project, the president answered, “generally, this is the case”.<sup>242</sup> LIDHO works in teams to assess potential projects, determining their viability before submitting to partners for financing.<sup>243</sup> LIDHO were working on two projects when interviewed: a project of ‘cohesion’ in the border regions between Liberia, Guinea and Ivory Coast and project of training and reinforcement of capacity in terms of decentralisation, where local populations are trained to get involved in the development of their own area.<sup>244</sup> At Club UA the president, once elected for a term of five years, appoints a 12-person board (which includes all the permanent members of staff) and this board makes decisions on which projects to pursue. The president also reports to the general assembly of all members every two years.<sup>245</sup> While on paper these processes appear to be transparent and democratic, it would be difficult to assess the impact of influential members of the boards. Furthermore, the composition of the board itself can be heavily influenced by the head of some organisations – with the entire board of Club UA being appointed by its president.

The reality of the above decision-making process was hard to discern and, as noted above, the question caused difficulties. It is possible that projects are chosen on the basis of their human rights impact and correlation with the NGOs’ stated missions. However, in the scramble for funding, it is likely that applications are made when funding opportunities become available for projects and that the organisations will choose projects based on those opportunities.

Another aspect of an organisation’s transparency and organisational capacity is the mechanisms of oversight that are applied to individual projects. MIDH, APDH and Club UA follow up their human rights projects using questionnaires which are submitted to participants.<sup>246/247/248</sup> MIDH also stated that they measure a project’s effectiveness by the amount of congratulatory phone calls they receive.<sup>249</sup> The only organisation which moves beyond congratulatory phone calls or questionnaires was

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<sup>242</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>243</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>244</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>245</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>246</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>247</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>248</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>249</sup> Interview, Abidjan, September 2010 (MIDH 2010).

LIDHO, who has a staff member responsible for writing project evaluation reports. There was no discussion by any of the participant organisations as to how the feed-back generated is used to improve future performance. The lack of proper assessment mechanisms reduces the organisations' capacity to act as agents of censure as a lack of accountability erodes the legitimacy of their operations and will impact their ability to generate public opinion. From a practical point of view, it hampers their ability to learn from previous projects so that processes can be improved and mistakes can be avoided. Consequently, it would appear that all key human rights NGOs in Ivory Coast have in place fairly rudimentary procedures for evaluating their work. These NGOs lack reliable data-sets that could be used to empirically evidence their organisational deficiencies and strengths. Without a resistance strategy that is informed by critical reflection and rigorous data-sets, it could be argued that these organisations risk repeating practices that are inappropriate, ineffective or counter-productive.

The internal organisational limitations of the NGOs are amplified, if they are compared with the internal practices of the corporations they are expected to resist. In 2008, Trafigura agreed to a £9 million management training programme following an organisational audit.<sup>250</sup> The weaknesses identified at Trafigura were similar to those of the Ivorian NGOs, and included: poor data quality, lack of expertise at senior levels of the organisation, and lack of adequate oversight at the management level. But while the problems may be similar, the NGOs lack the financial resources and expertise needed to deal with them. This of course is a product of the broader political-economic environment in which they operate. Indeed, Makumbe explains that civil society in Africa is generally

... fairly weak and beset with constraints of a financial, organizational, operational and even environmental nature. Some of these constraints have been generated by Africa's history, while others are the result of the continent's present social, cultural and political condition. (Makumbe 2008: 316-317)

Here Makumbe (2008) is specifically referring to the effects of colonial regimes, which

... made strenuous efforts to ensure that no civic groups would emerge in their colonies to challenge them for violating people's rights, for imposing

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<sup>250</sup> Particulars of Claim of Olswang LLP in *Kieran Looney v Trafigura Beheer BV* [2011] EWHC 125 (Chancery Division).

authoritarian governance and for pillaging the Africans' human and natural resources. (Makumbe 2008: 310)

It is clear then that each NGO's internal issues are determined to some extent by its environment. Thus the next section will look at the external factors that influence the NGOs' capacity to resist state crime.

#### *External Factors: Funding and Access to Government*

According to Lasslett (2012), if resistance movements are to be effective they must possess "... the right measure of financial assistance, complemented by a range of avenues for legal and direct action" (Lasslett 2012: 4). He adds that these determinations are always relative to the crime itself, and the campaign of denial mounted by the powerful. This section discusses how the human rights NGOs are funded, the influence donors have over the organisations' operations, and the effect this has on their capacity to act as agents of resistance. Avenues for legal action and censure are explored in the following section.

Makumbe (2008) argues that funding secured by most African NGOs is ring-fenced and inadequate. Project agendas are set by external donors and NGOs must ensure that funding applications and project delivery fit with the aims of these donors. This is similar to the situation observed in Ivory Coast and even when funding is forthcoming for the Ivorian human rights organisations, it tends to be relatively paltry and project based<sup>251</sup>.

The majority of APDH's project funding is from three external partners: the Swiss Embassy, the US Embassy and the local UN office. The average project budget is about 10 million CFA (about €15,000) over one or two years. Project accounts are self-audited internally and audited externally when required by external partners.<sup>252</sup>

Initially, MIDH collected money from members but it was not a stable funding stream so they now only seek funding from external partners.<sup>253</sup> This highlights the problem faced by NGOs working in Ivory Coast and the conflict of interest that may pervade the organisation; as even attempts to be funded by the population which would be served by

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<sup>251</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>252</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>253</sup> This is a stark contrast to the victims organisations (see Chapter 7) who survive solely on membership fees.

the NGOs have failed – necessitating foreign donors to fund the organisation. The main external partners are Oxfam, the National Endowment for Democracy (NED), the Canadian Embassy, German Embassy and US Embassy. The average project budget is €35,000 to €100,000 for projects that run from one to three years.<sup>254</sup> MIDH have both internal and external audits. Internal audits are concerned by independent auditors and external partners use external auditors to oversee their respective projects.<sup>255</sup> The main venture that MIDH is currently working on is a three-year project on prisons, funded by NED.<sup>256</sup>

LIDHO have two main external funding partners – the Danish Refugee Council and the European Union (EU). They have also some funding from the International Rescue Committee (IRC). In the past they have been financed by Oxfam and NED. The 2010 project budgets range between 2 and 50 million CFA (about €3,000 to €75,000). In the past, when they were financed by Oxfam Novib, they had a project worth 200 billion CFA (about €300,000) over three years.<sup>257</sup>

CLUB UA's main projects concern children's rights and principally exhorting parents to obtain birth certificates for their children, land rights and training the population on how to vote. The most recent project had a budget of about 10 million CFA (about €15,000), and their accounts are audited internally and externally by a firm of auditors.<sup>258</sup> Club UA do collect funds from their members and they also have external funding partners: the Canadian Embassy, US Embassy, the European Union, NED, Organisation International de la Francophonie, Ecole le Paix de Grenoble (School of Peace, Grenoble) and "an organisation in Switzerland".<sup>259</sup>

Clearly the local NGOs are heavily funded from outside the state and most of the aid is specifically project-based and from foreign government sources (with the notable exception of France, the post-colonial power). This creates a number of problems which reduce the capacity of Ivorian NGOs to resist state crime.

First, the NGOs are beholden to foreign funders, who have their own acute political agenda, which may not necessarily be allied to victim interests. For example, a number

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<sup>254</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>258</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>259</sup> Ibid.



of the NGOs received funding from NED, which has a history of funding projects and movements that further the US' neoliberal agenda in the developing world. NED uses the cloak of civil society to operate politically (Blum 2002) in countries important to US interests<sup>260</sup> and claims that its "nongovernmental character gives it a flexibility that makes it possible to work in some of the world's most difficult circumstances, and to respond quickly when there is an opportunity for political change".<sup>261</sup> Blum (2002) argues that "NED likes to refer to itself as an NGO because this helps to maintain a certain credibility abroad that an official US government agency might not have. But NGO is the wrong category. NED is a GO" (Blum 2002: 179-180). NED is clearly not an NGO, as it is funded by the US Congress with oversight provided by the US Congress and the US Department of State and has an annual grant budget of about US\$100 million<sup>262</sup> (NED 2011). NED's engagement in the country has steadily increased over the years; in 2005 and 2006 NED committed about US\$400,000 each year to Ivory Coast. In 2010, this figure rose to US\$1.1 million. Over 67% of the funds were channelled to three NED sister institutions ('the NED institutions'): the National Democratic Institute for International Affairs (NDI), chaired by Madeleine Albright, the International Republican Institute (IRI), chaired by John McCain, and the Center for International Private Enterprise (CIPE) which has a stated mission of strengthening democracy through corporate interests and market-oriented reform. The remaining funds are distributed amongst the local NGOs. This includes about US\$450,000 to MIDH (which is 9.2% of the total funds distributed by NED in Ivory Coast between 2005 and 2010 inclusive), about US\$145,000 to Club UA (3% of total), about US\$160,000 to APDH (3.3%), US\$68,000 to LIDHO (1.4%), and about US\$95,000 to RAIDH (2%). All the funding was project based, with no allowances for institutional funding. The projects ranged from those concerned with prison conditions (MIDH) to various vague and general projects; for example, to "improve civil society oversight of public institutions" or "strengthen women's knowledge of civil rights and democracy". While NED is a major contributor to the human rights NGOs, they are funded by other governments too. When funding is obtained from foreign governments, Ivorian NGOs must adjust their agenda to the corporate goals of the relevant foreign mission.

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<sup>260</sup> IRI, 2011, Message from the President, Lorne W. Craner, available at <http://www.iri.org/learn-more-about-iri-0> (accessed November 2011).

<sup>261</sup> <http://www.ned.org/about>

<sup>262</sup> <http://www.ned.org/sites/default/files/IndependentAuditorsReport2010.pdf>

Second, as Ivorian NGOs lack direct budgetary funding, any human rights project must go through a cumbersome process of application of review. These projects take some time to propose and initiate and limits the NGOs response times, and could go some way to explain a lacklustre reaction to the dumping. Without contingency funds, an NGO must await a funding approval before moving forward with any project. An alternative stream of funding could in theory come from the Ivorian state, but the reality of the relationship between the NGOs and the state does not support the transfer of funds from the state.

Project money from embassies are imperialistically applied and this could be considered a method of control; using project-based funding means that the organisations cannot run projects without the approval of donors, the vast majority of which are states (through embassies and NED); “a number of African NGOs have responded chiefly to governments rather than their supposed clientele. Others have lost local legitimacy through their dependence on funding sources from outside the country” (Grugel 2000). The scramble for funding can make NGOs accountable to donors as opposed to those they were constituted to assist. To justify the continued attraction of funding to an NGO, funders’ expectations must be satisfied and most aid will have conditions (or ‘strings’) attached. The vast majority of funding for human rights NGOs comes from overseas aid and as a result the NGOs are answerable to large organisations that are far removed from the realities of local life.

Decisions on which projects to pursue cannot be made by NGO boards as they will depend on whether funding is available. Ensuring that funding is inadequate assures the NGOs’ dependence on the donors for survival. Grugel (2000) argues that the presence of external donors challenges NGOs to maintain two policy agendas: “their own, based on a notion of civil society as people-centered development and democratization; and that of their funders, who use the term to mean capitalist modernization and liberalization” (Grugel 2000: 103). One of the major donors, NED, has funded projects for all of the NGOs under study here at one time or another.

Tombs and Whyte (2003) argue that studies of state-corporate crime examine the complex relationships between harm and economic, political and social power. The next section sets out the landscape of the interrelationship between the political (state) and social (civil society) powers in Ivory Coast. The section looks first at the support, or

lack of, provided to NGOs by the government and then tries to untangle the political influences of the state on the NGOs and the social influences of civil society on the government.

### *NGOs and the State*

It appears that the NGOs, despite their history, distance themselves from the suggestion that they are aligned to any political actors in Ivory Coast. An analysis of the interaction between the government and the NGOs provides more insight into the relationship. The interviews question the support and encouragement provided by the government to the NGO community, whether financially or otherwise.

The Ivory Coast government has never it appears directly encouraged APDH to take on any projects, nor are they financed by the government. And while their advocacy and project based activities are not facilitated by the government, they claim to take a complementary approach and “are associated to some activities that the government undertake”.<sup>263</sup> While APDH hope to complement governmental tasks, this has not always been the case and their activity has tended to assume the role of governmental tasks: “the government does not play its role so [APDH] are obliged to”.<sup>264</sup> Even though APDH finds itself substituting for government, they claim that the government has never impeded their work.

While this may be true of the ‘official’ government based in Abidjan, there have been territories outside the Ivorian state’s control at one time or another, and in June 2010, during a campaign in the northern part of the country, APDH were attacked by “well armed rebel forces” – the New Forces (or Forces Nouvelles) army who controlled that territory.<sup>265</sup> It is not clear why the group were attacked but NGOs have been accused of siding with one side or another during spats of civil war that Ivory Coast has experienced, and in 2002 the Minister of Justice accused MIDH of working for the rebels, which led to assaults on NGO members by the public.<sup>266</sup>

Despite these accusations, MIDH have received encouragement from the government to take a more active role in pursuing projects, but, “not openly”.<sup>267</sup> The reasons for this

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<sup>263</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

<sup>266</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>267</sup> Ibid.

lack of ‘openness’ is unclear, but it may be that the political considerations of engaging with an NGO in a way that would admit an inability of the government to fully deal with a situation. Alternatively, it may be to avoid association with organisations that have been accused of political ties to the opposition in the past.

MIDH substituted for government with their prison project, as implemented in Bouake and Daloa, providing assistance to prisoners: “normally a government task”.<sup>268</sup> While MIDH claim that government has never directly impeded their work, their first president and his replacement were both exiled to the USA for highlighting human rights abuses by the government.<sup>269</sup> LIDHO claimed that the government have never either encouraged or impeded their work. But they also stated that human rights NGOs are sometimes threatened by the government, organisations or individuals.<sup>270</sup> Club AU state that apart from the signing their incorporation documents, they have never received encouragement from the government to take a more active role in any area. The government has impeded the work of Club AU, especially in the interior of the country, and they attribute this to ignorance of government officials as to their role and a “rivalry between their actions and those of the government”.<sup>271</sup>

It may be that the government threats are considered an indirect impediment to work, or alternatively that participants were careful not to criticise the government in interview – but no participant attempted to convey dissatisfaction with the government either off-tape or off-the-record. However, there are clear attempts by the government to suppress criticism and this will undoubtedly promote caution on the part of NGOs when criticising government human rights abuses. This apprehension will tend to limit the NGOs’ ability to censure government activity. It would appear that elements of the Ivorian state have at times employed force, or the threat of force, to shape how institutions of resistance within civil society strategically pursue their cause. The Ivorian state has not exhibited any ambition to completely silence dissent but it is apparent that their goal is to ensure that it is expressed in a manageable fashion. When NGOs have acted in ways that complement the government, they have received encouragement from the state. However, when they have reacted in ways that threaten the existing governing project they have been harassed. As a result of this subtle state

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<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>271</sup> Interview, Abidjan, September 2010 (Club UA 2010).

terror, the range of desirable strategies available to Ivorian NGOs when resisting state-corporate crime has been limited and this will have weakened their capacity to censure. It is apparent from the above that the Gramscian ‘struggle’ for civil society is played out within the NGO sphere – and this battle is more obvious between the victims organisations, discussed in Chapter 7 – but this ‘rivalry’ shows that there is also a potential struggle between civil society, represented by NGOs, and the state. Investigative interviews (with journalists, among others) raised the issue that the following allegiances existed:<sup>272</sup>

LIDHO – Front Populaire Ivoirien (FPI)

APDH – Front Populaire Ivoirien (FPI)

MIDH – Rassemblement des Républicains (RDR)

Club UA – Gadaffi inspired group

APDH say that have no connection to any political parties but know that the political parties in Ivory Coast have, because of “their willingness to control some NGOs and civil society”. But they are not perceived as powerful actors on the ground: “they are legless, they are not significant”. APDH refused to name any of these NGOs.<sup>273</sup> When asked whether his NGO had any connection to a political party, the president of MIDH answered, “No”, but with a caveat: “... as soon as you get out of this office and you ask anybody in Ivory Coast, they will say RDR”. The reasons for this were explained as, (1) the first president of MIDH, Zorro Ballo, was the judge who signed the nationality certificate of Alassane Ouattara, then president of RDR. Ouattara was formerly the deputy director of the IMF and is now the president of Ivory Coast, after the UN and French forces overthrew Gbagbo on his behalf. And (2) the fact that a former president of MIDH was from the north of the country and the majority of the organisation’s members are also from the north – RDR is therefore seen as a party of people from the north. But MIDH deny the claim: “I can assure that they have no particular link with this political party.”<sup>274</sup>

The president of MIDH stated that there is a perception that APDH is close to FPI, the political party of Gbagbo, but again denied this to be the case: “after long discussions

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<sup>272</sup> Interviews, September 2010, Abidjan.

<sup>273</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>274</sup> Interview, Abidjan, September 2010 (MIDH 2010).

with the president of this NGO, I know how the man is and I cannot say that he is from a political party.”<sup>275/276</sup> It was noted that this was a personal perspective that would require corroboration. He went on to explain that at the beginning of the Ivorian crisis, in 2002, APDH supported the position of the president, so some of those in power participated in creating LIDHO. The previous president of LIDHO used to be the financial director of the labour party.<sup>277</sup> When asked whether the interview at LIDHO could be recorded, the president answered; “LIDHO is a non-political, non-governmental organisation concerned with the defence of human rights, so they have nothing to hide.”<sup>278</sup> When asked whether any of the large NGOs in Abidjan are politically motivated, the vice-secretary general of Club UA said, “Personally, I do not know.”<sup>279</sup> However, they did state that the organisation is inspired by Gadaffi.

Clearly, it would appear that Ivorian NGOs are reluctant to acknowledge any links with specific parties. Nevertheless, while this may be politically expedient on their part, from a sociological vantage point, the capacity of NGOs to resist the crimes of the powerful depends on their ability to establish relationships with institutional organs within the state and civil society. A capacity to work with opposition political parties avails to NGOs governmental resources and forums, which can potentially increase their strategic ability to expose and censure crime.

As Lasslett (2012) argues, resistance should be mounted by movements and networks of actors. In Ivory Coast, the NGO community is at pains to remain independent from politics and the sector is internally fragmented. Despite the heritage of political involvement, the NGOs have few viable connections with the state and report no conduits in government to work through. Furthermore, as we shall see, lawyers are well represented by NGO staff but rarely make use of the judiciary system. The Ivorian Ombudsman does not provide an avenue into the state apparatus as it is a weak institution with no legal powers.<sup>280</sup> Struggle and resistance, along with the mechanism of sanction and censure, should involve the state and other civil society actors and a lack of these connections will weaken resistance movements (Lasslett 2012).

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<sup>275</sup> Ibid.

<sup>276</sup> It was noted that this was a personal perspective that would require corroboration.

<sup>277</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>278</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>279</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>280</sup> <http://www.lmediateur.ci/inst.htm#>

### *Application of Significant Sanctions by Domestic Human Rights NGOs*

With a state-corporate crime, there are two actors – the state and the corporation. The significance of sanctions applied will differ from each actor's point of view. A corporation strives primarily for profit (and to a lesser extent, growth with a view to increasing future profit generation capacity). In order to achieve the profit goal, a large international corporation must pursue power and influence; in order to be a preferred commercial partner. Typical sanctions applied against corporations include legal actions (with a view to fines) and public campaigns (and/or boycotts) that damage a corporate reputation and, by extension, future profitability (at least in the short term). Campaigns are more effective against consumer-facing companies, which Trafigura is not, and fines would have to be very large to make an impression on Trafigura's annual turnover. Therefore, arguably the most effective sanctions that could be applied to a large close business would be to affect their power to influence governments for favourable treatment and industry-friendly laws. One powerful tactic in this respect is legal action. Major legal actions can mobilise public support for human rights issues, while exposing offenders to prolonged periods of negative publicity. In Ivory Coast, where NGOs lack the capacity to mobilise the public through political campaigns, the law remains one of the few conduits open to them. Nevertheless, as we shall now see, it is employed unevenly and conservatively by Ivorian human rights NGOs.

### *Use of the Legal System as a Tactic to Defend Human Rights (and the Associated Communication to the World of the Crime)*

Human rights law in Ivory Coast is enshrined in both international and domestic law instruments, by international treaty and domestic constitutional arrangements. But serious crimes tend to involve human rights abuses, and criminal charges (under domestic law) can be made against individuals as well as organisations. The human rights NGOs appear to have some capacity, in terms of staff and legal standing, to resist state crime by filing legal complaints against the government but most do not take advantage of this fact. This may be a result of suspicions regarding the independence of the judiciary (see Chapter 3). Whatever the reason, the inability of civil society organisations in Ivory Coast to access justice through the legal system allows for state, state-organised and state-corporate crime to flourish.

APDH get legal support from a board known in English as the commission of legal affairs and judiciary assistance. The APDH executive board and administrative staff includes three lawyers, two magistrates, three people working in justice, a secretary of justice and eight law graduates.<sup>281</sup> APDH have lodged complaints on behalf of civilians against government military forces at a military tribunal. They have also started proceedings against a student union (namely FESCI, discussed below), by lodging complaints with the Attorney General, but they were not acted upon. Since 2008, they have acted on behalf of 20 people in criminal legal proceedings.<sup>282</sup>

MIDH have a legal department with five lawyers and four law graduates. They have never filed an action against the government within the domestic legal system but MIDH has initiated two separate proceedings against the Ivorian state at the African Commission on Human and Peoples' Rights (cases 246/02 and 262/02). Both cases alleged, with some success, that the Ivory Coast constitution contained provisions which are discriminatory to some citizens.<sup>283</sup> From 2008 to 2010 MIDH launched about ten criminal actions against individuals, including against policemen for extortion. While it is difficult to gauge the success of such actions, the status quo has been maintained and even state crime researchers are prone to extortion by Ivorian police.<sup>284</sup> MIDH have also assisted a student union to file a criminal legal complaint against another student union following the rape of one of their members.<sup>285</sup>

When faced with legal issues, LIDHO consult with their former chairman, a professor of law and a lawyer, and the third president who is also a lawyer.<sup>286</sup> LIDHO have never considered legal action against a corporation, but they do provide assistance to victims in finding a lawyer. LIDHO has considered legal action against a student union but has never considered legal action against the government or an individual.<sup>287</sup>

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<sup>281</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>282</sup> Ibid.

<sup>283</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>284</sup> Observation, Abidjan, September 2010; at a checkpoint, on a Saturday evening, the researcher's taxi was stopped on the bridge that connects the neighbourhoods of Deux Plateaux and Plateau, and was forced at gunpoint to pay €30 or risk spending a night in a police station.

<sup>285</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>286</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>287</sup> Ibid.



Club UA do not have a legal department but do have ‘legal officers’. They have never considered legal action against the government, a corporation or an individual.<sup>288</sup>

The NGOs sparingly use law as a tool to resist the crimes of the powerful, and do not deal with a large number of individual complaints. Furthermore, none mentioned that they were involved in any project that dealt with the human rights abuses that resulted from Trafigura’s toxic waste. It is to this topic the questions now turn.

*Use of Censure to Resist State-Corporate Crime: the Trafigura case*

In order to censure a large company such as Trafigura, which is engaged in complex forms of crimes, resistance groups need to be exceptionally well resourced and employ extensive links to nodal points within the state and civil society through which they can act.

It is very difficult to match the resources of a large, powerful organisation like Trafigura in order to censure the corporation; and the above analysis has revealed that NGOs are completely isolated and have no connections with the state or other NGOs in order to achieve effective censure. NGOs were aware of the dumping from the outset and APDH provided a succinct version of events:

A ship that came from Europe, declared that it had onboard waste water but in reality it was toxic substances. They gave the waste to a company for treating and dumping. This company was not competent in treating the substances, and immediately dumped the toxic substances in Abidjan. Immediately, on the morning of the dumping, all of Abidjan was invaded by bad odours and people were intoxicated. Officially, 500,000 victims were intoxicated and 21 dead. These are official figures, provided by the state of Cote d’Ivoire, Ministry of Health.<sup>289</sup>

APDH have been approached by victims of the toxic waste dumping and, now four years after the event, claim that they are considering the matter and possible future legal action against the government.<sup>290</sup> However, as noted above the legal system may not be sufficiently independent in order to be relied upon to provide relief against the

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<sup>288</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>289</sup> Interview, Abidjan, September 2010 (APDH 2010).

<sup>290</sup> Ibid.

government. Moreover, human rights NGOs' legal strategy appears haphazard at best, and poorly resourced.

MIDH claim to have had “un peu” (a little) involvement with the toxic waste case of 2006. They investigated the matter in collaboration with la Fédération Internationale des Ligues des Droits de l'Homme (FIDH), a Paris-based association of NGOs, of which LIDHO and MIDH are member organisations.<sup>291</sup> FIDH, LIDHO and MIDH published a report (in French) in April 2011, outlining how this crime was dealt with by the domestic and international justice systems. It is indicative that neither LIDHO nor MIDH have independently published reports on the issue and it is their relationship with this international NGO that has produced results. MIDH also claim to have assisted the UN Special Rapporteur when visiting Ivory Coast to investigate the matter.

Club AU did investigate the toxic waste dumping and visited numerous dumping sites before making a declaration, “to condemn vehemently what was considered as a real violation of human rights in Ivory Coast”.<sup>292</sup> However, they did not produce any documentation or reports on the issue as they felt the issue was outside their expertise.<sup>293</sup> Club UA highlight here another aspect of the mismatch with Trafigura: this small underfunded NGO cannot command the same scientific knowledge as the international corporation.

It appears that domestic NGOs did not have the capacity to resist the state-corporate crime of the dumping and did not get involved in the pursuit of civil or criminal legal justice. MIDH say that they have not followed the matter too closely because it has been tainted by profiteering: “when people see you more active, they immediately think that you want to have money”.<sup>294</sup> And for this reason they currently only provide advice to the victims and don't get involved with the matter.

Thus, it would appear that while domestic human rights NGOs were aware of the dumping, and its significance as a human rights violation, they have fundamentally failed to respond in a decisive fashion. At first glance, this might be seen as a simple result of organisational preference. However, it would appear the factors underlying this lacklustre response lie in the weakness of those resisting state-corporate crime in Ivory

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<sup>291</sup> <http://www.fidh.org/Cote-d-Ivoire-In-view-of-the-intensification-of>, accessed November 2011.

<sup>292</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>293</sup> Ibid.

<sup>294</sup> Interview, Abidjan, September 2010 (MIDH 2010).

Coast. As I have argued, these organisations lack financial resources, skilled personnel, and reflective strategy. Moreover, Ivorian human rights NGOs are isolated, indeed many celebrate this isolation. However, without links to organs of opposition within the state, or to counter-hegemonic institutions within civil society, these organisations lack the capacity to react to the crimes of the powerful, or formulate a carefully theorised, well resourced, censure strategy. The relative strength of the offender compounded the weakness of human rights NGOs.

However, none of the above processes occurred within a vacuum. The state has attempted to terrorise civil society. And while this has not totally suppressed dissent, it has ensured that it is expressed in ways that are more tolerable to the state. Moreover, as NGOs are dependent on project funding, they are also beholden to foreign states. In the case of Trafigura, this entailed that they simply lacked the resources to respond through more conservative means (legal actions, research studies), while more radical courses of action were closed off by a lack of inter-linkages with political groups, unions and churches.

### *Conclusion*

This research reveals that – relative to those who they were resisting against – the domestic NGOs had little capacity to expose, control, constrain or sanction the large-scale state-corporate crime seen in Chapter 5. The failure to mount a comprehensive resistance is a result of a combination of internal and external factors. Internally, NGOs suffering from a lack of institutional funding, resources and quality personnel, as reported during interviews. The external factors include the apparent unwillingness of Ivorian NGOs to pool resources and expertise with other civil society organs (for example, trade-unions, the church, community groups, and probably most importantly, other NGOs), as well as an inability to maintain a working relationship with elements within the state which could aid resistance (for example, an ombudsman office, the judiciary, or sympathetic political parties). It will be suggested, that the fundamental underdevelopment of NGOs in Ivory Coast – which fundamentally weakened their capacity to censure Trafigura – is a manifestation of successive colonial and post-colonial government policies, the imperial agendas of foreign states, and Ivory Coast's peripheral role in the world economy.

Employing Lasslett's (2012) relational paradigm of resistance, this chapter gauged the capacity of domestic NGOs in Ivory Coast to resist state-corporate crime – specifically the dumping as explored in Chapter 5 – and showed the lack of faculty for local NGOs in Ivory Coast to resist, expose and/or sanction a state-corporate crime akin to the dumping. Lack of funding, staff and expertise was a common feature and a function of the economic and political environment in which the NGOs found themselves. The vast majority of funding (when it is forthcoming) comes from foreign governments, some with a spurious agenda, and is project-based so that the organisations are restrained from building on their institutional capacity. Perhaps the most surprising failure was the isolationist attitudes of the NGOs, and Club UA pointed out that the local NGOs rarely pool resources:

There is no genuine collaboration. In other countries, when governments take a decision and civil society does not agree with the decision, they resist collectively. But in Ivory Coast, this is not the case.<sup>295</sup>

This lack of collaboration between NGOs to 'resist collectively' is a serious limitation and precludes the establishment of an effective resistance movement to single issue events like the dumping. When asked about what advice they give to victims who approached them about the dumping, the president of MIDH stated that they would redirect them to the local victims organisations. But he was clear to state that he would not advocate victim organisations or federations. MIDH distance themselves from these federations because of the "issue of money" and the struggle for profit amongst these federations.<sup>296</sup>

While researching human rights NGOs on my field trip to Ivory Coast, it emerged that the interests of the victims of the dumping were not being served by the existing human rights NGOs based in Ivory Coast but by newly formed, bespoke organisations and federations – victims organisations. The next chapter reveals how the victims organisations, facilitated and encouraged by the state, have taken a role upon themselves that would normally be expected to be within the purview of the state or of the well-established human rights NGOs. Further investigation revealed that these victims organisations were in fact self-serving so that victims have been left without genuine

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<sup>295</sup> Interview, Abidjan, September 2010 (Club UA 2010).

<sup>296</sup> Interview, Abidjan, September 2010 (MIDH 2010).

representation on the issue, and are further being exploited based on their status as victims. It is to these victims organisations and that this study will now turn.

## Chapter 7 – Organised Crime and the Commodification of Victimhood

The victims organisations interviewed appear to be in the business of producing victimhood for a fee, which can be understood as an ‘organised crime’. The term ‘organised crime’ is used here to describe a form of ‘organisational crime’ (or deviance) on the one hand and rather primitive or ‘unorganised crime’ on the other. The use of the term ‘organised crime’ is problematic and Levy argues that “it might be better not to rely on the term or alternatively to rely on the fact that it does not have a stable meaning” (Levy 2007: 799).<sup>297</sup> However, this thesis embraces the instability of the term and adopts a broad definition of organised crime based on Woodiwiss’ definition: “systematic criminal activity for money or power” (Woodiwiss 2001: 3). While this definition is wide enough to include *inter alia* corporate crime (Green and Ward 2002), it is applied here to organisations that purport to be civil society organisations – would-be ‘champions of the people’ – but have the ulterior and hidden motives of capital accumulation at their clients’ expense. As will be shown, the more ‘successful’ victims organisations in Ivory Coast were set up by opportunists/crime entrepreneurs.

Using such a broad interpretation of organised crime avoids the pitfalls of legal definitions, the unresolved discourse in academic attempts at a definition, or an association with enduring stereotypical ‘Sopranos’ (la Cosa Nostra) type organisations (also known as ‘syndicated crime’; Newburn 2007).

Legal definitions are too restrictive for present purposes. For example, the EU definition of ‘organised crime’ requires that a collaborative enterprise between at least two people be suspected of criminal offences carrying sentences of at least four years (European Commission and Europol 2001). A reliance on domestic criminal law can, as was seen with state-corporate crime in Chapter 5, allow other deviant behaviour to fall outwith that definition. Furthermore, the use of ‘suspicion’ is too far removed from the principle of objectivity for the purposes of a scientific study of crime.

As for academia, Levy argues that:

Very few academics would defend the analytical utility of the term organized crime, with its crude binary organized/unorganized distinction which means that

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<sup>297</sup> This point is demonstrated by the collation of no less than 160 definitions of ‘organised crime’ available at <http://www.organized-crime.de/organizedcrimedefinitions.htm> (accessed May 2012).

there is more variation within the category of organized that there is between organized and unorganized ... many have shifted towards using the term 'enterprise crime'... (Levy 2002: 887)

As will be seen in this chapter, the organisations acted in a disorganised, ad hoc manner and the crude binary that Levy (2002) refers to fails to account for the behaviour observed. It was also not deemed necessary here to follow a shift towards 'enterprise crime', or indeed to coin any new term (such as, for example, 'NGO crime') as once defined for present purposes, organised crime fits with the activity uncovered by the research – that is, the exploitation of victims by newly established victims organisations.

The attractiveness of victimhood to local members of the community could be based on two premises. The first is that they have indeed been the victim of the state-corporate crime and seek recognition of this fact (for various possible psychological and sociological reasons), and the second is the promise of a future claim for compensation.

The previous chapter analysed a range of factors which weakened the response of domestic NGOs to the toxic dumping. Underpinning this analysis was a criminological assumption that those censuring state-corporate crime are necessarily a force for 'good' and social justice. This chapter is going to question this assumption. While data-collecting on my field trip, it became apparent that the civil society actors that were spearheading domestic efforts to censure Trafigura were in fact embedded in organised crime. Victimhood became a commodity, which they attempted to manufacture by encouraging victims to come forward and *pay* to join non-existing class actions which were to take place in foreign courts. Therefore, this chapter will examine the infiltration of civil society by organised crime groups and describes how the dumping incident created the opening for organisations to exploit victims, essentially criminalising resistance.

The chapter begins by exploring the relationship between the nation-state and various forms of organised crime, "which ultimately defines organised crime's power, character and persistence" (Green and Ward 2004: 104). The next section of the chapter discusses the precedent of the transformation of a student union (FESCI) from a resistance organisation to a criminal gang. By looking at this historical example, some indicators of the mechanism of such a transformation are noted. The chapter finally looks at how

criminal groups took advantage of an absentee government to exploit victims of the dumping and reveals the conditions “for organised crime to fill the vacuum created by an ineffective state” (Green and Ward 2004: 87; Sands 2007).

### *Background of Organised Crime*

There is a base level of organisational crime in Ivory Coast, against the background of which the newly formed victims organisations should be analysed. In 2004, about 4% of the population was employed (at least officially). About 64% of the total population was under 24 years old. This lack of formal employment for a large, young population fuels the expansion of an informal sector – a sector dominated by criminal networks in West Africa (Wannenburg 2005). The informal sector in Ivory Coast is significant, and even the National Council of Ivorian Employers (CNPI), according to Integrated Regional Information Networks (IRIN) (2005), encourages companies to “exploit opportunities in the informal sector”. The drivers of organised crime in Ivory Coast have changed during the state’s short history and have been both of an internal and an external character.

The enduring conflicts in Ivory Coast have had an effect on the prevalence of organised criminality. There are a number of dimensions to this factor. First, as McMullin (2009) argues, organised criminal groups are “involved in a wide array of activities within conflict states” (McMullin 2009: 76) and civil wars in conflict states have brought about “cross-border demand for arms, soldiers and natural resources” (McMullin 2009: 88). Second, Wannenburg argues that human trafficking in West Africa “is exacerbated by civil wars, refugees, internal displacement, the recruitment of child soldiers and economic conditions” (Wannenburg 2005: 11). Third, the UN claims that West African conflict states,<sup>298</sup> have “played a significant part in international drug trafficking, diamond smuggling, human trafficking, cigarette smuggling, forgery, money laundering, armed robbery and arms trafficking” since 1995, in order to generate revenues for combating internal threats (UNODC 2005: 13). Fourth, armed groups that are spawned by conflict interact with the established criminal groups: “armed groups co-opted, displaced or co-operated with existent criminal groups” (McMullin 2009: 84; and see Wannenburg 2005: 8 and UNODC 2005: 38). Thus, the endemic civil conflict that has punctuated Ivory Coast’s modern history has generated a variety of opportunities for organised crime groups (in the traditional sense, and under the

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<sup>298</sup> Including Ivory Coast, Sierra Leone, Liberia, and Guinea.



definition employed here) to flourish, under the protection of a state that welcomes the revenues generated by these illicit industries (ICG 2004: 4). Regional conflict fuels demand for weapons and the “highly porous, largely unpatrolled borders” (Small Arms Survey 2006: 256) are a failure of Ivorian government to secure the state’s territory which allows for the illicit trade. Fighters and tens of thousands of weapons (UNODC 2009) circulate between war-torn states in West Africa, whose borders are “revolving doors of trafficked arms and de-mobilised soldiers of one state re-recruited to fight in another” (McMullin 2009: 88). According to Amnesty International (2008), the main players in arms trafficking weapons in Ivory Coast are private Ivorian and European brokers. However, the government is also proactively involved in the arming of pro-government militias, and has “provided support for some ten thousand ill-disciplined militia fighters” (HRW 2005: 1). These militias are highly criminogenic, “but enjoy impunity due to their relationship with the government” (Small Arms Survey 2006: 255). Human Rights Watch also claims that these militias have perpetrated “serious crimes with impunity ...” (HRW 2005: 1). On the other side of the conflict, the Forces Nouvelles de Côte d'Ivoire “engage in serious human rights abuses such as extrajudicial executions, torture, arbitrary detentions and confiscation of property” (HRW 2005: 1).

However, while significant, war is not the only factor fostering organised crime. In a country where government is dominated by a form of patrimonial politics, the state has been treated as the private property of the ruling factions. Using state power these factions have been able to extract personal wealth as well as funding for the war chests (Global Witness 2007) from the economy through the use of cocoa and coffee marketing boards. The International Crisis Group (ICG), for example, claim that Houphouët-Boigny’s ‘slush fund’ was fed by the complex arrangement of the cocoa marketing board and its associated organisations referred to as the cocoa *filière*:

The labyrinthine cocoa *filière*, a kind of Enron-type structure of front companies, secret bank accounts, and transfer of funds with multiple layers of insulation between the criminal acts and their eventual beneficiaries, is the ultimate testament to their sophistication. (ICG 2004: 4)

The *filière* system, which was originally designed to guarantee a minimum price for cocoa and coffee payable to farmers, “operates through a nexus of interconnected institutions that make up the cocoa and coffee marketing system” (ICG 2004: 5) and up

to the 1980s received about 60% of the cocoa and coffee revenues, leaving farmers with about one quarter of world market prices (ICG 2004).

The cocoa *filière*'s role is to regulate the market but cocoa institutions have, claim Global Witness, "directly contributed to the war effort by providing the government with money, vehicles and weapons, using money from cocoa levies" (Global Witness 2007: 24). The ICG report the allegation that US\$100 million was extorted from one of the institutions of the *filière* system, "and later used to buy weapons in a deal managed by an off-shore company" (ICG 2004: 5). A World Bank official told Global Witness that "[w]e know that the revenues collected from cocoa are used to fund the military" (Global Witness 2007: 24).

In March 2002, at the request of Gbagbo, a government inspector François Kouamé Kouadio (of L'Inspection Générale d'Etat or IGE) started investigating the reformed *filière* system. He reported on accounting anomalies in the form of gifts and 'loans' of about US\$200 million and in August 2002, shortly after his report was leaked, he was beaten up in Abidjan. This report had also warned that the state bank holding cocoa proceeds might not be "able to resist (possible) demands for funds from the Ministry of Economy and Finance" (Global Witness 2007: 56). He has since been fired from the IGE and reportedly remains in hiding (ICG 2004; Global Witness 2007).

Others reporting on corruption within the *filière* system have suffered a similar fate to Kouadio. In April 2004, for example, Guy-André Kieffer<sup>299</sup> was kidnapped in Abidjan. He had been working on reforming the cocoa sector and had been investigating Ivorian corruption as an independent journalist. His whereabouts are unknown but he was reportedly tortured to death (Global Witness 2007). Several months later, in November 2004, Xavier Ghelber<sup>300</sup> was kidnapped in Abidjan during his EU audit of the cocoa sector. At gendarmerie headquarters in Abidjan, Ghelber was reportedly threatened at gunpoint before he managed to escape with the help of French troops (Global Witness 2007). A French judge is looking into both the Kieffer and Ghelber cases: "The judge's preliminary findings indicate that three of Xavier Ghelber's kidnappers belonged to ... the president's private security force" (Global Witness 2007: 57). The disappearance of Guy-André Kieffer and the attacks on Kouadio and Ghelber exposes "the very real

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<sup>299</sup> A French-Canadian journalist.

<sup>300</sup> A French lawyer.

dangers of denouncing corruption and other abuses in the cocoa sector” (Global Witness 2007: 59) and does nothing but discourage civil society’s role in resisting these crimes.

Not surprisingly in a country that has been burdened by civil wars and state corruption, formal economic opportunities are few and largely unattractive (for reasons that have already been outlined). This has created the incentive for a variety of illicit trades based around smuggling (drugs, humans, natural resources and weapons) and money laundering. The following section briefly outlines these activities.

Drug production in Ivory Coast is on the increase but is limited to low-grade cannabis<sup>301</sup> (Gonto 2010), grown by farmers trying to avoid the volatile cocoa and coffee markets and the exploitative *filière*. The financial advantages of growing marijuana are obvious:

Whereas coffee and cocoa get the seller an average of FCFA 500 (US\$ 1) per kilogram, and of this sum, a host of taxes is still deducted centrally, one kilogram of marijuana can get the seller a tax free FCFA 4000 (US\$ 8). (Gonto 2010: 25)

The country is one the four main producers of cannabis in West Africa<sup>302</sup> and supplies – by way of criminal organisations – local or regional markets (Wannenburg 2005). However, despite a lack of ‘hard drug’ production in the state, Gonto (2010) argues that the expanding regional trade is headquartered in Abidjan. Drug traffickers use the territory as a hub for transporting heroin (from Asia) and cocaine (from South America) to Europe and the United States (Adamoli et al 1998; Gonto 2010; US DoS 1994). Increased policing of drug trafficking in the ports of Nigeria has driven criminal networks to the less policed coastline and waterways of Ivory Coast<sup>303</sup> and the “vast and porous land, riverine and seaports and extensive corruption among government and customs officials provide an ideal environment for illicit trade” (Wannenburg 2005: 11). This ‘ideal environment’ is one of the reasons for the toxic waste being repelled from the Nigerian ports and being accepted in Ivory Coast, and is another indication of how the Ivorian state facilitates crime. But it is not just the corruption of customs regime on the coast that has allowed smuggling to thrive; the northern borders are porous too, which has facilitated a range of illicit industries.

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<sup>301</sup> Known locally as ‘dagga’.

<sup>302</sup> The other three being Nigeria, Ghana and Senegal.

<sup>303</sup> As well as to Togo, Ghana and Senegal.

During the partitioning of Ivory Coast from 2002 (see Chapter 3), the north became a kind of “free trade zone” (Wannenburg 2005: 10). Cheap cigarettes are imported from Guinea and sugar is imported from Burkina Faso and Mali. Cotton, cultivated exclusively in the north (IRIN 2005), is exported to Burkina Faso and Mali. All these transactions are illegal and no duty is payable to the Ivorian state treasury. However, charges are levied by rebel forces (Wannenburg 2005) who argued that “government taxes would be used by the presidency to buy arms and prolong the war” (IRIN 2005), a view confirmed by Global Witness (2007).

The volume of the illicit market is significant. In the 2004 and 2005 seasons, about 220,000 tonnes (about 55% of total production) of cotton were illegally exported to Mali and Burkina Faso (IRIN 2005). The UN argues that the volume of Asian sugar being illegally imported damages local industry and is “undermining local production” (UNODC 2009: 23). Northern Ivory Coast, outside the full control of the state centralised in Abidjan, is the second largest market for illicit cigarettes in the region with 17% of West Africa’s illicit cigarette market (worth US\$104 million per annum, 23% of the regional total): “the trade is rife in the unstable north but almost non-existent in the south” (UNODC 2009: 31). The UN also argues that ‘a large share’ of oil stolen from Nigeria is refined in Ivory Coast (as well as in Ghana and Cameroon) (UNODC 2009: 23). This suggests state involvement in criminal activity, as the only oil refining facilities in Ivory Coast are government owned (Wild 2010).

Ivory Coast is also a well documented human trafficking route (Wannenburg 2005), especially for children (Chanthavong 2002; International Institute of Tropical Agriculture 2002). The number of trafficked children working on plantations in Ivory Coast ranges from 12,000 to 15,000; which is between 9% and 12% of the total child workforce in the industry (Ellenbogen 2004). In an international press offensive, in order to avoid a boycott of Ivorian chocolate, the government insisted that “it should be seen as the victim, not the perpetrator of child trafficking. It says that it had no idea what was going on its plantations” (Blunt 2001).

Funds from the above organised criminal activities usually find their way to Abidjan, the financial hub of West Africa, and are laundered along with the proceeds of regional organised crime. The cross-border trade in cocoa (and to a lesser extent diamonds), “generates contraband funds that are laundered into the banking system via informal

moneychangers” (US DoS 2007). A lack of government oversight and regulation facilitates these financial crimes.

This section would suggest that, owing to a variety of factors, organised crime is a central feature of Ivory Coast’s political economy. Moreover, organised crime has infiltrated the state and vice-versa. Thus organised crime in Ivory Coast is both instigated and facilitated by the state. In such an environment, it is perhaps not surprising that no sector of civil society has remained untainted by the influence of organised crime. This is certainly the case with the victim groups that were set up in the wake of the dumping. However, the hijacking of civil society by criminal gangs is not new. The case of the main Ivorian students’ union, FESCI, demonstrates how resistance has been criminalised. An analysis of this union has two roles: to look at the context in which resistance can be criminalised and also to discuss the links between FESCI and the victims organisations.

#### *FESCI and the Criminalisation of Civil Society*

The Fédération Etudiante et Scolaire de Côte d’Ivoire (Student Federation of Ivory Coast or FESCI) has been accused of organised criminal activity and has reported connections to some of the influential victims organisations (see below). This section looks at the transformation of FESCI from a genuine pro-democracy student group engaged in the resistance against state crime to a violent, repressive criminal organisation. The union was originally founded in 1990 as “a platform for students to air their grievances” (IRIN 2007: 40). However, owing to its opposition to the government, FESCI was driven underground and appears to have emerged in the late 1990s as a criminal gang. Despite the apparent criminality of FESCI, the group is considered to be a training ground for future leaders of the Ivorian state: “FESCI is the best school for leaders there is. You come out battle hardened and ready to do politics”<sup>304</sup> (HRW 2008: 1). This section charts the union’s transition and links the changes to the criminalisation of resistance.

FESCI started out in 1990 to seek reform of the Ivorian one-party system and from the outset was funded by opposition parties, including the Front Populaire Ivoirien (FPI). Consequently, Houphouët-Boigny and his Ivorian Parti Democratique de la Côte

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<sup>304</sup> Former leader of FESCI, interviewed by Human Rights Watch, October 2007 (HRW 2008: 1).

d'Ivoire (PDCI) party viewed FESCI as subversive and after the state's first presidential election (Houphouët-Boigny versus Gbagbo) in 1991 saw Houphouët-Boigny win amidst accusations of electoral irregularities, "the organization was formally banned and forced underground soon after its creation, with many of its leaders hunted and jailed" (HRW 2008: 7). This period also saw allegations of collaboration between FESCI and the army. Human Rights Watch claim that a government inquiry into a raid into a university dormitory led by General Guéï in 1991 and including both soldiers and FESCI 'foot-soldier' members resulted in the rape of at least three women and a number of beatings. Guéï was not sanctioned by the government for his involvement (HRW 2008), which – following Green and Ward (2004) – may indicate that he was carrying out acts in pursuit of the state's, (or a section of the state's) organisational goals.

The majority of FESCI's leaders were jailed during the 1990s. Martial Ahipeaud (FESCI founder), Eugene Djué (FESCI founder), Guillaume Soro (rebel leader and prime minister) and Charles Blé Goudé (Young Patriots founder) were all considered by Amnesty International (1992) to be 'prisoners of conscience'. Outside of the leadership of FESCI, Gbagbo (and his wife) and the president of LIDHO were arrested and sentenced to prison terms for activities related to the union (HRW 2008; Amnesty International 1992).

FESCI re-emerged in 1997 but with an apparent shift in character. Following the 1999 coup General Guéï allowed the union to resume full operations (US DoS 2001). Since the early 2000s, FESCI has, HRW claims, "[b]een responsible for politically and criminally motivated violence, including assault, extortion, and rape" (HRW 2008: 6) and has been accused of attacks on the state (including ministers and judges), civil society (including human rights NGOs and journalists) and individuals. The group is especially violent towards those opposed to the Gbagbo administration and in 2004 FESCI lynched the communist party leader (US DoS 2006). Furthermore, "FESCI is routinely associated with 'mafia' type criminal behavior including extortion and protection rackets" (HRW 2008: 99) on and around university and high school campuses (HRW 2008). The victims of FESCI are mainly the students they purport to represent but they have also targeted other civil society actors.

The bulk of FESCI's criminal activity takes place on campuses, university residences and the surrounding areas throughout Abidjan, and the group allegedly aims to "control

political thought, student activities and even commerce on campus” (LIDHO quoted by IRIN 2007: 40). Academic freedom is threatened and students report “harassment and extortion by FESCI members” (IRIN 2007: 40) as well as cases of rape and torture (IRIN 2007). University professors and lectures are also targeted: “One teacher’s face was disfigured in an attack, prompting his colleagues to halt work for two weeks” (IRIN 2007: 41).

HRW claims that since 2002, FESCI has “exhibited an increasing tendency to criminally appropriate and allocate key university facilities and services” (HRW 2008: 52). Students are forced to pay monthly stipends to remain in student residences and small-traders selling food and drinks on campus must pay monthly ‘taxes’ to FESCI (IRIN 2007). This protection racket for the merchants includes a system of ‘justice’ that would normally be provided by the state. A FESCI member interviewed by HRW in 2007 explains:

If a merchant we protect has a problem with a thief, he will bring them to us. He’ll come to whoever is on duty that day who listens to both the thief and the merchant and then decides what to do. Usually he decides how much the thief owes to the merchant and takes a commission from the thief as well. Often the thief is beaten too. Merchants prefer to come to FESCI because we’re more efficient than the police where you risk things not going anywhere. Police have no right to come to our territory. If they come, we chase them away. They are usually afraid of us anyway. So even if a citizen goes to the 8<sup>th</sup> precinct to say they have a problem with FESCI, the police will tell you they can’t do anything about it. (HRW 2008: 55)

This interview reveals the substitution of the state’s justice system by FESCI and also highlights the relationship between the student group and the police. The impunity afforded to FESCI was also reported by participant human rights NGOs, both by the inaction of the police and the criminal justice system.<sup>305</sup>

In May 2007, “LIDHO and APDH were victims of violence by FESCI”<sup>306</sup>. FESCI attacked and ransacked the headquarters of LIDHO and APDH (with the damage estimated at about €60,000). The apparent motive was the NGOs’ support of strike

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<sup>305</sup> Interviews, Abidjan, September 2010 (LIDHO and APDH 2010).

<sup>306</sup> Interview, Abidjan, September 2010 (APDH 2010).

action by university professors but it has been claimed by members of LIDHO and APDH that “FESCI’s real goal was both the elimination of files and records that contained details regarding FESCI’s misdeeds, as well as punishment for having publicly denounced FESCI’s actions in the past” (HRW 2008: 71). Police were present at one of the attacks and stood by (HRW 2008). This incident shows how agencies of the state facilitate the repression of the censorship capabilities of local NGOs and also highlights the volatile relationship between FESCI and the human rights NGOs.

APDH started proceedings against FESCI following the attack, by lodging complaints with the Attorney General, but they were not acted upon.<sup>307</sup> LIDHO was forced to abandon its former HQ after the attack.<sup>308</sup> LIDHO also considered legal action against FESCI.<sup>309</sup> MIDH has assisted a student union to file a criminal legal complaint against FESCI following the rape of one of their members.<sup>310</sup> Nothing has come of these legal complaints, and the next section explores the relationship between the student group and the state with a view to explaining the impunity that FESCI enjoy.

The head of FESCI from 1995 to 1998, Guillaume Soro became the secretary general of the Forces Nouvelles (FN) and then the Prime Minister of Ivory Coast, in a ‘unity’ government, from March 2007 to October 2010 (Global Witness 2007). His rise from student leader to government leader is not unusual as “FESCI appears to have become a training ground for emerging Ivorian leadership” (HRW 2008: 93). Many FESCI leaders have moved on to lead the youth wings of many of the major political parties and other former leaders have set up their own parties. Another example is Charles Blé Goudé,<sup>311</sup> leader of FESCI from 1999 to 2001 (HRW 2008). The atmosphere created by the FESCI ‘political nursery’ promotes the creation of “a generation of leaders who have cut their political teeth in a climate of intimidation, violence, and impunity...” (HRW 2008: 8).

The secretary general of FESCI denies that the organisation is politically motivated or violent but did admit that there have been violent incidents and claims that “we remind the instigators to be orderly” (IRIN 2007: 41). This sanction is not significant and indicates that the individuals involved in violence are pursuing organisational goals.

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<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

<sup>309</sup> Interview, Abidjan, September 2010 (LIDHO 2010).

<sup>310</sup> Interview, Abidjan, September 2010 (MIDH 2010).

<sup>311</sup> In 2006, Goudé was the head of the Young Patriots (an ultranationalist pro-government group).



HRW (2008) claim that the head of the Ivory Coast army supported FESCI when they attacked the national television station and supported the student group generally during the anti-UN riots in January 2006 (HRW 2008). This close-knit relationship between the government and the student group has both contributed to state-organised crime and the criminal impunity “associated with nearly all offenses perpetrated by members of FESCI” (HRW 2008: 82).

Indeed, interviewees for Human Rights Watch’s report claimed that FESCI’s political power and criminal behaviour is a result of governmental support as the group is “protected by power” (HRW 2008: 81) and “supported by the FPI” (HRW 2008: 81). University residences are known as a “no mans land” (HRW 2008: 82) due to the “absolute control exercised by FESCI and the inability or unwillingness of state security forces to intervene in the face of criminal conduct by FESCI members” (HRW 2008: 82). Judges and police interviewed by Human Rights Watch in 2007 explained the impunity in terms of fear for their career and personal or family safety, as well as “the unpredictability of taking action against those they believe to have enormous political cover” (HRW 2008: 84). So while the criminal activities of FESCI are well documented, they are well protected and “government authorities have only rarely investigated, arrested, and prosecuted those FESCI members responsible” (HRW 2008: 81).

FESCI are a large criminal organisation operating in Abidjan with impunity. This is a form of state-organised crime owing to the organisation’s inter-linkages with the state. But the particular interest in the FESCI group for this thesis is that fact that, as a student union, they would be expected to be a ‘force-for-good’ member of civil society. However, any positive role they played as the representative voice of students has been changed into a quasi-state body role dictated by close links with political parties and senior politicians. This creates the framework in which their role to “control political thought” (LIDHO quoted by IRIN 2007: 40) on campus on behalf of the political elite can be commodified through their supplementary rackets and extortion activities. The commodification of a civil society therefore appears to be a phenomenon with deep roots in Ivory Coast. Therefore, when the toxic dumping looked like generating a significant monetary windfall, it is not surprising that victimhood became commodified under the direction of organised groups. FESCI was, as will be seen, involved in this process.

Looking at the reaction of the government to the dumping, it is clear that Ivory Coast was an ineffective state. A UN Special Rapporteur<sup>312</sup> who visited Ivory Coast in August 2008 was clear that the Ivorian government was not in a position to deal with the dumping: “it is fair to say that the Government did not have the capacity and was not prepared to handle a crisis of this magnitude ... [and] ... while various relevant Ministries were mobilized to deal with the crisis, many did not have the capacity or the budget to respond adequately” (Ibeanu 2008). Green and Ward (2004) warn that

... there is a tendency in weaker states ... for organised crime to fill the vacuum created by an ineffective state. In these circumstances organised crime is able to flourish and even to compete with the state in terms of specific administrative and political functions. (Green and Ward 2004: 187)

The inaction of the government left a vacuum that has been filled by a myriad of brand new bespoke voluntary organisations who have countenanced numerous allegations of corruption and extortion. The victims organisations cannot be usefully equated with traditional organised crime or enterprise crime organisations, as there is no penetration of a formal or informal market as such. They have in a sense generated a market by commandeering victimhood. They are attracting funding and generating return based solely on the victimhood of their members, who are being enticed through false-promises and propaganda.

As outlined in Chapter 2, six victims organisations or federations were interviewed by the author: UVDTAB, FENAVIDET, RENADVIDET, CNVDT, FAVIDET and VUCAH (see Glossary for long-form names). As shown below, there are a number of commonalities between these organisations. All were purportedly set up in late 2006/early 2007, claim to have many thousands of ‘members’ and have similar stated missions. Significantly, they also share mechanisms by which to extort fees from victims for some hypothetical and unlikely future compensation claims. Furthermore, as the data below reveals, many of these groups claim to be the official group set up by the president and to have been involved with the class action launched by Leigh Day & Co solicitors.

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<sup>312</sup> Okechukwu Ibeanu.

### *Some Basic Details of the Main Organisations*

UVDTAB was founded on 26<sup>th</sup> September 2006, and is staffed by volunteers. The president of UVDTAB claimed that there are 560 volunteers. However, this number seems high. These organisations would not have the logistical capacity to sustain so many volunteers<sup>313</sup> and no evidence was presented to support the claim. UVDTAB claims to represent about 100,000 victims and offers them registration: “we list them, so these people can also receive the status of victims and receive medical care”.<sup>314</sup> The first stated objective of UVDTAB is the identification of all victims, with the view to organising to resisting the perpetrators of the crime; “we have to get united to fight together”.<sup>315</sup> Another objective is the identification of toxic waste sites, located throughout the city and its suburbs, which have been neglected by the authorities; “to identify as well places that have been forgotten by the state of Ivory Coast, places where there are toxic wastes”.<sup>316</sup> Their third objective is the “absolute decontamination of all polluted sites”.<sup>317</sup> Fourthly, UVDTAB are asking for the construction of a medical centre that can assist all the victims. Fifthly, they are also pursuing compensation for victims that is “proportional to the crime committed”.<sup>318</sup> Finally, they would like to see a study of the medium- and long-term consequences of the toxic waste on human health and on the environment. They say that such a study has never been carried out.<sup>319</sup>

CNVDT claims to have been originally formed in 2006, three weeks after the dumping – when they “saw the scope of the disaster” – under the name ‘Association pour les Victimes d’Abidjan’. About two years later, from the end of 2008 to February 2009, about forty victims organisations that had been independently formed merged to form this federation.<sup>320</sup> They claim to have been instructed by Leigh Day & Co solicitors (Leigh Day), who are running the class action claim in the UK. However, this is denied by Leigh Day (Brown 2009). CNVDT is staffed by 42 people, each president of the 40 original associations and two members of staff that are paid: the secretary and the head of the IT service. They claim to represent 289,000 people, 134,000 of whom are children, across all of the districts of Abidjan. They have four main objectives: first, to

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<sup>313</sup> Observation, Abidjan, September 2010 (UVDTAB).

<sup>314</sup> Interview, Abidjan, September 2010 (UVDTAB).

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.

<sup>319</sup> Ibid.

<sup>320</sup> Interview, Abidjan, September 2010 (CNVDT).

better organise those affected by the dumping; second, to fight for compensation for the organisation's members; third, to arrange health care for victims; and finally, to lobby political leaders to legislate to prevent this kind of disaster happening again.<sup>321</sup>

FAVIDET formed in March 2007. It is a federation of 23 associations and organises meetings of up to 100 victims associations. FAVIDET has a central committee of four people. They also have two doctors and two lawyers, as well as members responsible for security and communications; all staff members are volunteers. They do not have an accurate number of victim members and are “surveying the issue”,<sup>322</sup> with a view to having an accurate number available within six months. The stated objectives of the federation are to gather the associations of victims, the identification of all the victims of the toxic waste, the compensation of all the victims and the provision of health care to the victims. When asked whether there were any other similar organisations, the president said that some federations have been created but he refused to name them.<sup>323</sup> FAVIDET was originally a local district specific victim support group and claim to have been legally founded with the help of LIDHO. Then, at the President of Ivory Coast's request, they organised as a federation, again with the help of LIDHO who sent PhD students to assist them. FAVIDET say that they have absolutely no resources, and 100 million CFA promised to them by the state, after the government had reached a settlement with Trafigura, has never materialised. FAVIDET claim that they were also involved (as did CNVDT) with the class action of Leigh Day, and assisted in compiling details of victims, as did other associations.<sup>324</sup> The interview took place at a conference venue, during an event organised by this federation to roll out their new registration identification cards (see Appendix B for a sample that was provided for the purposes of this thesis). These ‘victim cards’ were part of the paraphernalia of the federation and its members, and they appeared to be produced to give the federation an impression of legitimacy in order to entice victims to join them.

FENAVIDET was formed on 24<sup>th</sup> February 2007<sup>325</sup> “at the invitation of the head of state” after attending the presidential palace on 7<sup>th</sup> December 2006. FENAVIDET claims that the president stated he would take “important measures to find a solution to

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<sup>321</sup> Ibid.

<sup>322</sup> Interview, Abidjan, September 2010 (FAVIDET).

<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> Interview, Abidjan, September 2010 (FENAVIDET) and [http://www.fenavidet-ci.com/index.php?option=com\\_content&view=article&id=68:declaration&catid=1:latest-news&Itemid=76](http://www.fenavidet-ci.com/index.php?option=com_content&view=article&id=68:declaration&catid=1:latest-news&Itemid=76)

the problem”<sup>326</sup> and that “private organisations such as theirs should take important measures to defend the victim’s rights for the benefit of justice for all”.<sup>327</sup> It appears that the state is deferring to the victims organisations and “for that reason, the president offered 40,000,000 CFA and suggested that they create well organised federations to best fight for their objectives”.<sup>328</sup> FENAVIDET claim that their organisation “has been created, by all the organisations that the president welcomed at that time”.<sup>329</sup> This claim again echoes the claims of other groups to be the only official victims organisation.

FENAVIDET claim to have about 15 permanent, paid members of staff: “[the] majority are volunteer workers except that they receive compensation just to encourage them to work”,<sup>330</sup> “it is not a salary as such ... they are all volunteers but receive compensation regularly”.<sup>331</sup> From May to September 2010, FENAVIDET claims they were also paying about 45 computer ‘scientists’.<sup>332</sup> These ‘scientists’ were hired to design and administer the organisation’s database of victims. In the Ivory Coast such a grand mobilisation of computer ‘scientists’ is quite an unusual and doubtful achievement. It is made all the more dubious by the fact that the office only contained about ten computers, while the database itself would in all likelihood require no more than two or three IT specialists.<sup>333/334</sup> These dubious claims made by FENAVIDET were part of a broader theatrical production that was designed to entice victims. When I entered their office they showed me computers and an array of one-metre-high stacks of documents purported to be registrations of victims. Another theatrical prop employed by FENAVIDET are membership cards, which were also handed out by other groups. When asked how many victims they represent, FENAVIDET claim that “it is impossible to give a precise number of victims”,<sup>335</sup> and that “they cannot answer because they need to be careful”.<sup>336</sup> FENAVIDET’s stated mission is to (1) “1<sup>st</sup> and foremost is the decontamination of the Abidjan environment”, (2) medical assistance to all the victims, and (3) reparations from Trafigura – “Trafigura need to compensate all

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<sup>326</sup> Interview, Abidjan, September 2010 (FENAVIDET).

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

<sup>334</sup> Observation, Abidjan, September 2010 (FENAVIDET).

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

the victims.”<sup>337</sup> FENAVIDET claim that they are not financed by any external organisation and that this “is one of the biggest problems that we are facing”.<sup>338</sup> FENAVIDET claim that it is for this reason that they charge membership fees.<sup>339</sup> They would not reveal how many members they have, or how much the membership fee is. When asked who is responsible for the dumping, FENAVIDET stated: “There is only one responsible – one that is believed to be the most powerful, the richest able to corrupt everybody and even violate international conventions and to commit crimes of such dimensions – it is Trafigura.”<sup>340</sup> This statement is indicative of the general approach the victims organisations take to Trafigura; elevating the company to the status of an all-powerful demon, which only they can defend against.

It was apparent to the author, following the interviews with the victim organisations, that many of their claims were incredible. Indeed, unlike domestic human rights NGOs, these organisations claim to be mobilising significant technical and human resources, in an extremely challenging and competitive environment. Moreover, they also appeared to have extensive links with the class action in the UK and the Ivorian President. All of these claims were supported by office props that would lend credibility to their claims. However, the spectacular claims did not end here, as will be seen.

#### *Funding, Legitimacy and Capacity to Represent Victims*

UVDTAB say that they are funded in various ways: donations from individuals from NGOs and individuals in Switzerland and France, and from partnerships with TV and radio channels such as BBC, Al Jazeera, CNN and other press organisations and journalists.<sup>341</sup> It seems unlikely that this organisation receives financial support from international press organisations and the whole operation appeared underfunded and seemed to be just a one-man operation<sup>342</sup> (despite the claims of having 560 volunteers mentioned above). During interview, it became clear that while the leader of the organisation had a strong and apparently energetic, passionate personality, the facilities of the organisation were lacking. The interview took place in a room with wooden benches along the walls, separated by a curtain from seamstresses busily working

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<sup>337</sup> Interview, Abidjan, September 2010 (FENAVIDET).

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Ibid.

<sup>341</sup> Interview, Abidjan, September 2010 (UVDTAB).

<sup>342</sup> Observation, Abidjan, September 2010 (UVDTAB).

away<sup>343</sup> in a sowing shop. Another office across the road had no furniture but was covered floor-to-ceiling in what the organisation claims to be thousands of victim registration documents.<sup>344</sup>

The president referred often to the organisation's legal initiatives but there is little evidence of the capacity of UVDTAB to carry out their objectives using the law. The president mentioned working with barristers and solicitors on an ongoing civil case at the High Court of Justice in London. There is, however, no record of this case. It may be they were referring to the settled case with Trafigura run by Leigh Day & Co but the only ongoing issue in that case is a disagreement regarding the £105 million legal costs bill filed by Leigh Day & Co in 2010 (Dowell 2010). The president also discussed his organisation's intervention in a case in Ivory Coast in September 2008 but there is currently no civil or criminal case pending in Ivory Coast. UVDTAB are preoccupied with their legal legitimacy as outlined by one<sup>345</sup> of five booklets handed over during the interview. These booklets – with titles/subjects ranging from legal capacity, mission to Europe 2010, press book, *Universal Periodic Review* and stories of victims – give a valuable insight into the priorities of the organisation.

The 'legal capacity' booklet contains a copy of meeting minutes establishing the organisation on 26<sup>th</sup> September 2006 complete with official judicial stamps. It also contains a copy of the official receipt for filing the legally required incorporation documents for the organisation, exactly a year later in September 2007 and another similar receipt in August 2008, both issued by the Ministry of Interior. The booklet also contains a copy an official journal extract, which the president claimed shows that his organisation is the only officially recognised victims organisation in Ivory Coast.<sup>346</sup> This is similar to statements by RENADVIDET: "It is the only organization accredited by the Ivorian state for this mission" (RENADVIDET 2010). The UVDTAB entry in *Journal Officiel de la Republique de Côte d'Ivoire*<sup>347</sup> is brief and states that the organisation's aims are to assist in a complete identification of victims and to ensure support for patients, but makes no reference to the *Probo Koala*.

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<sup>343</sup> Ibid.

<sup>344</sup> Ibid.

<sup>345</sup> UVDTAB: Capacité Juridique, undated (copy with author).

<sup>346</sup> Interview, Abidjan, September 2010 (UVDTAB).

<sup>347</sup> State journal of record, for publishing legal announcements (similar to the *London Gazette* in the UK).

The ‘mission to Europe 2010’ booklet is a catalogue of 14 photographs of the president with individuals, or outside offices of organisations around Europe. The booklet contains only pictures and does not have any text, other than captions to the photographs). The president also pointed out a number of photographs of people on his ‘office’ wall which he claimed to be supporters. He insisted that a photograph be taken of our meeting, which will undoubtedly end up on the wall with the rest of his ‘supporters’; thereby using King’s College London as a medium for the organisation’s legitimacy. The ‘press book’ included clippings from French and Dutch newspapers that incorporated a photograph of the president as well as more photographs of the president with journalists from around the world and a BBC lawyer.

UVDTAB also claim that they are the only group recognised by the UN, and refer to a report submitted by them<sup>348</sup> to the UN’s *Universal Periodic Review* in 2009. However, this only shows that the UN recognises their existence and does not imply that they are the only legitimate victims organisation. They are also listed on the UN civil society database,<sup>349</sup> but again this does not amount to recognition and simply requires the organisation to fill out a short online form. The president also produced a letter from the UN in Geneva claiming that it was an invitation to attend the UN buildings, but the letter (which was in English) appeared only to outline general security arrangements at the UN buildings in Geneva.

These booklets are only concerned with the legitimacy of UVDTAB to represent victims, and all the energies of the organisation are focused towards promoting this impression. The final booklet, ‘stories of victims’, is the only one that is dedicated to the mission of the organisation and profiles alleged victims of the toxic waste along with pictures and text describing their experiences. Some of the injuries sustained by the victims profiled, such as amputated limbs, do not match with the medical evidence presented by studies in Abidjan (see Chapter 5).

FENAVIDET’s office had a long queue of victims waiting to register when visited for the interview and the door entrance was blocked by two large men who appeared to be

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<sup>348</sup> Available here:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CI/UVDTAB\\_CIV\\_UPR\\_S6\\_2009\\_F.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CI/UVDTAB_CIV_UPR_S6_2009_F.pdf)  
(accessed November 2011).

<sup>349</sup> Available here:

<http://esango.un.org/civilsociety/showProfileDetail.do?method=showProfileDetails&profileCode=617302>  
(accessed November 2011).



acting as security guards.<sup>350</sup> The interviewees expressed that they were upset that they weren't the first victims organisation that was visited to participate in this research because they felt that they were the most legitimate organisation<sup>351</sup> and it was only after profuse apologies and an explanation that any research project requires meticulous planning to ensure that it achieves its objectives that the interview was allowed to proceed. The organisation had been created in 2007 at the invitation of the head of state: "All those associations that were spontaneously formed to defend victim rights have been invited by the Republic on December 7<sup>th</sup> 2006 to attend the presidential palace."<sup>352</sup>

According to FENAVIDET, the President (at this meeting) declared he would take measures to find a solution to the problem. For that reason, the President offered 40 million CFA (about €60,000), "to create well organised federations".<sup>353</sup> FENAVIDET claim that the federation was created by all the organisations that the President welcomed. This is very similar to the stated circumstances around the founding of CNVDT and FAVIDET. At the end of the interview, FENAVIDET admitted that they didn't have any ideas on how to proceed with compensation claims, despite the fact that they were busily registering victims in the next room, and asked me if any ideas or assistance could be provided to them.<sup>354</sup> This would suggest that the organisation is more interested in obtaining fees from victims, while little or no consideration has been given to the pursuit of justice.

CNVDT claim that, in December 2006, they met state officials and all the victims organisations with the president of CNVDT as the spokesman and received a one-off payment of about 40 million CFA (about €60,000) to get organised – this is the same sum reported by FENAVIDET. Apart from this funding, CNVDT claim that they receive funding and material support primarily from private individuals.<sup>355</sup> They do not have a legal department but claim to have lawyers. CNVDT have not taken legal actions at the domestic level but stated that they have taken legal action against Trafigura: "So it's now in the London tribunal, through the cabinet called Leigh Day & Co."<sup>356</sup> CNVDT had claimed in 2009 that they have a mandate from all claimants to receive and

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<sup>350</sup> Interview, Abidjan, September 2010 (FENAVIDET).

<sup>351</sup> Observation, Abidjan, September 2010 (FENAVIDET).

<sup>352</sup> Interview, Abidjan, September 2010 (FENAVIDET).

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

<sup>355</sup> Interview, Abidjan, September 2010 (CNVDT).

<sup>356</sup> Ibid.

distribute the compensation from this case. However, Leigh Day & Co denied that this is the case (Leigh Day & Co 2009).

FENAVIDET claim that they have an “international judiciary action”<sup>357</sup> in process but could not give details.<sup>358</sup> There is no evidence of any such action and the claim has not been verified. FENAVIDET say that they are ‘pre-occupied’ with civil action against Trafigura. They admit that the action was criminal but only civil actions are ‘profitable’ “and will provide tangible results, to decontaminate all the sites that are still contaminated in Abidjan”.<sup>359</sup> FAVIDET launched its identification process in September 2010. It included the issuing of an identification card, with photo, name, date of birth and residential area for each of the victims. FAVIDET reportedly claim that the cards will “help every victim of toxic waste to be recognized as such” (Dao 2010). And in order to achieve this legitimacy, they sent letters to the Ivorian institutions and the United Nations Operation in Côte d'Ivoire (UNOCI) to ask that they recognise the card. They state that every victim will be considered if new compensation is forthcoming. They also claim that victims’ descendants would also benefit from health care, “if by chance there is evidence that their illness is related to toxic waste” (Dao 2010). Each victim must pay 5,000 CFA (about €8) for the cards (Assi 2010; Dao 2010).

FAVIDET claimed an intention to launch a civil action against Trafigura once they have compiled their list of victims, and claim to have engaged an Ivorian lawyer for this purpose.<sup>360</sup>

It is apparent from the interviews with victim organisations that their stated source of funding is dubious at best. Adding to the doubt is the modest offices these organisations possess, with the notable exception of CNVDT. Nevertheless, what is apparent is that the victim organisations all claim to be undertaking or preparing to undertake legal actions, sometimes falsely reporting their role with the class action in the UK. This is despite the fact that the organisations in general suffer from a distinct lack of expertise and were not able to provide any details of the pending or planned cases.

These claims, it would appear, are part of a broader theatre that these organisations use to lure in victims or people wishing to obtain the status of victimhood. In an almost

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<sup>357</sup> Interview, Abidjan, September 2010 (FENAVIDET).

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Interview, Abidjan, September 2010 (FAVIDET).

cultist fashion, these organisations offer people the promise of extensive payouts in return for a subscription fee. The proof they offer is the successful Leigh Day action that continues to pay out via CNVDT. These promises are bulwarked by a series of props designed to impress in the mass scramble for victims. This is a competitive process, each victim group must essentially outdo the other, in an effort to secure a larger share of the victim market. By victim market, I mean people who are prepared to subscribe to these organisations, through some form of payment, in the hope of gaining a share of promised compensation payments. As a result of this process, local Ivorian television proclaims that “the associations of victims of toxic waste grow each day like mushrooms since the disaster”.<sup>361</sup> It is to this process that we will now turn.

UVDTAB are convinced that Trafigura is responsible for what happened to the victims: “It’s Trafigura and Trafigura and Trafigura.”<sup>362</sup> After four years of involvement with the issue, CNVDT concluded that the crime is the result of a vast international conspiracy, involving “Trafigura and all the harbour authorities of the Occident to Africa”. The president initially refused to elaborate on the details – “I say it in my book. I won’t say it now” – but did go on to accuse the board of Trafigura and the authorities of the UK and Switzerland, for not controlling the corporation after previous crimes; “it’s not Trafigura’s first ‘blunder’ with this kind of disaster in the world” and the UK and Switzerland still allow the company’s headquarters to be based on their territory. CNVDT also believe that Trafigura’s blaming of the company Tommy is “a way of escaping. It’s shocking and scandalous for us.”<sup>363</sup> When asked who was responsible for what happened, FAVIDET replied: “Oh, but it’s Trafigura. For us it’s not the society Tommy.”<sup>364</sup> FAVIDET state that the best outcome for them would be free medical care for the victims.<sup>365</sup> While the victims organisations have missions that require some sort of legal or advocacy action against Trafigura and/or the Ivorian state, none have such an action in place. The only activity observed is that of registering and charging fees to the victims of the dumping, thereby profiting from their victimhood without providing concrete proposals for obtaining justice (by way of compensation or otherwise) for those who have suffered at the hands of the state-corporate crime.

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<sup>361</sup> From an RTI TV2 report, video (in French) available here: [http://www.fenavidet-ci.com/index.php?option=com\\_content&view=article&id=72&Itemid=80](http://www.fenavidet-ci.com/index.php?option=com_content&view=article&id=72&Itemid=80) (accessed November 2011).

<sup>362</sup> Interview, Abidjan, September 2010 (UVDTAB).

<sup>363</sup> Interview, Abidjan, September 2010 (CNVDT).

<sup>364</sup> Interview, Abidjan, September 2010 (FAVIDET).

<sup>365</sup> Interview, Abidjan, September 2010 (FAVIDET).

Since its founding FENAVIDET claims that the organisation has been working to identify all the victims of the dumping for an international legal action against the ‘polluter’ but also states that one of the organisation’s major objectives is to differentiate between their group and “arnaqueurs ... aventuriers ... et ... opportunistes” or “scammers ... adventurers ... and ... opportunists”.<sup>366</sup> FENAVIDET claims that others have forged their victim registration documents in order to “rip off the poor people seeking compensation”.<sup>367</sup> In 2010, the FENAVIDET website announced that a senior member of the group “has defected”<sup>368</sup> and is no longer associated with FENAVIDET. This former member of FENAVIDET has since set up Victimes Unies Contre les Catastrophes Humaines (VUCAH), another victims organisation, and claims to have 24,000 members (Tape 2010). This defection and setting up of a ‘competing’ organisation is an indication of the struggle between victims organisations.

In July 2011, RENADVIDET organised a sit-in outside the offices of the Ministry of Justice protesting the suspension by CNVDT of the compensation process since July 2010. They allege that the money has been embezzled: “CNVDT has diverted the funds” (Cheikna 2011) (discussed below). RENADVIDET argue that this is facilitated by and is a direct result of the secret agreement between Leigh Day and CNVDT (MTT 2011).

The conflict between some victims organisations is not limited to words, and the RENADVIDET president claims he was physically assaulted by CNVDT strongmen in February 2011 and that court security staff intervened on his behalf and locked him inside the office of the prefect for his own safety. Later in February 2011, about 200 people claiming to be victims of toxic waste and represented by RENADVIDET went to the offices of the prefect of Abidjan to demand their compensation from CNVDT before the second round of presidential elections; RENADVIDET stated that “we are tired and we need this money to be returned before the second round of the presidential election”.

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<sup>366</sup> <http://www.fenavidet-ci.com>

<sup>367</sup> [http://www.fenavidet-ci.com/index.php?option=com\\_content&view=article&id=68:declaration&catid=1:latest-news&Itemid=76](http://www.fenavidet-ci.com/index.php?option=com_content&view=article&id=68:declaration&catid=1:latest-news&Itemid=76)

<sup>368</sup> [http://www.fenavidet-ci.com/index.php?option=com\\_content&view=article&id=61%3Acommuniqu%C3%A9-pour-les-victimes-enrolees-au-baron-de-yopougon-au-banco2-au-terminus-42-yopougon-andokoi-yopougon-koweit-abobo-doumeyopougon-niangonmaroc-carrefour-anadoryopougon-wassakara&catid=3%3Anewsflash&Itemid=55](http://www.fenavidet-ci.com/index.php?option=com_content&view=article&id=61%3Acommuniqu%C3%A9-pour-les-victimes-enrolees-au-baron-de-yopougon-au-banco2-au-terminus-42-yopougon-andokoi-yopougon-koweit-abobo-doumeyopougon-niangonmaroc-carrefour-anadoryopougon-wassakara&catid=3%3Anewsflash&Itemid=55)

According to RENADVIDET, this action was the culmination of a month-long protest movement. There have also been legal battles between the groups, and RENADVIDET argue that an ‘executive order’ warrant against their president for the defamation of CNVDT was arbitrarily taken out (Yelly 2011).

There were gendarmerie police officers, armed with automatic weapons and displaying UN security guard badges on their uniform, stationed outside the front of the CNVDT building when visited for interview. When asked about their presence, the president answered: “Because the organisation is in charge of the compensation; the accounting database needs to be protected so it’s just for the security of the building.” However, accounting databases can be encrypted and the guards had not been present on an earlier visit to the building, when the president was not there and it is likely that the guards are protecting him.<sup>369</sup>

Tigana (2010) reports on “a battle between the presidents of associations” and the vice-president of a new federation, Collectif des Présidents des Associations des Victimes des Déchets Toxiques (CPAVNDT) claiming that FENAVIDET made the unilateral decision to take 15% of the government compensation due to be paid to victims and that the president of FENAVIDET refuses to hold elections after his two-year term expired. CPAVNDT is composed of 15 presidents of victims organisations formerly associated with FENAVIDET (Tigana 2010). CPAVNDT claims that it is negotiating with Trafigura on behalf of its 42,000 (APA 2010) victim members (Coulbaly 2010). VUCAH also claims to be in negotiations with Trafigura who are “willing to pay” (Tape 2010). When asked about how confident he was of further compensation, the president of VUCAH stated: “I’m sure as a victim first and a child of God, I do not pose without the advice of the Lord. The victims will be compensated” (Tape 2010). Like other groups, there is here a lack of detail on how compensation is due to be obtained for members and this research project has not uncovered any viable route to compensation of victims of the dumping by any victims organisation.

### *The Extortion of Compensation*

By the middle of 2008, the Ivorian government had paid out about 16 billion CFA (about €25 million) in relation to the dumping: 10 billion CFA was reportedly distributed to about 50% of the 100,000 victims recognised by the government, 1.5

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<sup>369</sup> Observation, Abidjan, September 2010.

billion CFA to families of 15 people killed, 1.75 billion CFA to ‘economic victims’ (mainly small business) and about 2 billion on ten clean-up projects. The Treasury of Abidjan claimed that they have a further 9 billion CFA to hand out to victims but have not accounted for the remainder of funds paid by Trafigura for immunity from prosecution, which is about 75 billion CFA (about €110 million) (AFP 2008). Gonto reports on the “extensive fraud committed in the compensation of victims” (Gonto 2010):

The FCFA 100 billion, disbursed by Trafigura under an agreement with the State of Côte d’Ivoire, has been squandered already. The dumping sites have not been rehabilitated. No monitoring is done on the use of this fund. (Gonto 2010)

In September 2009, Trafigura paid about €34 million into a Leigh Day account in Abidjan as compensation for the dumping. In early 2010, before the money could be paid to victims, the Court of Appeal in Abidjan – in what Leigh Day called “a terrible judgment” (Leigh Day 2010) – ordered the money to be transferred to the bank account of CNVDT. CNVDT attempted to draw down the funds but was prevented from doing so as a result of “police and political intervention” (Leigh Day 2010). The case was due to be heard in the Supreme Court but Leigh Day was not prepared to let it go that far in fear of a similar result:

... the forces in Abidjan that had persuaded the Court of Appeal to make their decision in [CNVDT’s] favour seemed likely to also prevail in the Supreme Court. As a result Leigh Day has felt it has had no alternative but to enter into talks with the CNVDT lawyers to see if there is a way of trying to ensure as much of the compensation as possible ends up in the pockets of the claimants rather than in the CNVDT bank account. (Leigh Day 2010)

It is clear from this statement that the British law firm had lost confidence in the Ivorian judiciary and allude to a lack of judicial independence. It also seems that the firm has given up on the possibility of ‘all’ the compensation reaching the indented recipients, which seems prophetic. According to RENADVIDET, of the approximately 30,000 victims involved in the UK class action, more than 15,000 victims have yet to be compensated by CNVDT (Salif 2011).

By the end of 2011, the situation in Abidjan with regard to these victims organisations remained unchanged. The Amsterdam Public Prosecutor is seeking a fine of €2 million to be applied to Trafigura for forgery, illegal carrying of waste and the concealment of the hazardous nature of the waste.<sup>370</sup> This case does not include provision for compensations for victims of the dumping. However, the victims organisations are taking the opportunity to ‘sell’ this case to the public: “Some of these NGOs are making the most of the current appeals court process in Holland to say – look, we are bringing Trafigura to court – give us money quick so we can give you your membership card!”<sup>371</sup>

### *Conclusion*

The actors at the centre of the deviant behaviour detailed in this chapter are the Ivorian State and the newly formed victims’ organisations. As the perpetrators of an organisational crime, they are two actors in one interrelationship. The rules that have been violated include domestic law and the dictates of social morality as judged from the point of view of the relevant social audience (and see Chapter 4). Potentially significant sanctions range from legal punishments (e.g. fines, revocation of licence to operate, conviction of members of staff), censure by the public and the press (both national and international) and resistance in the form of protest by the state’s own population. The social audience is civil society – represented by international NGOs, local human rights NGOs and victims’ organisations – which, in the Gramscian sense, is the space, “occupied in particular by organisations such as pressure groups, voluntary associations, religious bodies, the mass media and academic institutions, to the extent that they enjoy real independence from the state” (Green and Ward 2004: 4).

As has been seen, the victims’ organisations activities can be understood as an organised crime. The assumption that those censoring state-corporate crime are necessarily a force for ‘good’ has been fundamentally questioned by the chapter, and civil society actors are commodifying victims and getting them to pay for membership cards and fees for the chance to be compensated by non-existing class actions in foreign courts.

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<sup>370</sup> Amsterdam Public Prosecutor Press release, Hoge geldboetes geëist in hoger beroep Probo Koala, 17<sup>th</sup> November 2011, available at [http://www.om.nl/algemene\\_onderdelen/uitgebreid\\_zoeken/@157755/hoge-geldboetes/](http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@157755/hoge-geldboetes/), accessed November 2011.

<sup>371</sup> Email correspondence between the author and an international press correspondent, November 2011.

It is argued here that civil society has been hijacked by state-organised crime and the opportunity to do this is as a direct result of the dumping and of Trafigura's continuing impunity. The dumping of toxic waste created the victims in question. And the impunity afforded to Trafigura has meant that the company has not been compelled to admit liability and compensate the victims, nor has the corporation been formally required to clean up the waste sites.

The implications of the issues raised by the data analysed by this Chapter are far-reaching. In examining the role of civil society in labelling and sanctioning state and state corporate crime it should be borne in mind that common assumptions made of NGOs and victims' organisations as a force for good are misplaced. Civil society is more usefully conceptualised as a Gramscian space in which members of civil society vie for position (Gramsci 1971). In Ivory Coast, victims' organisations have been set up with dubious goals and assisted by the state have successfully taken advantage of normative assumptions of civil society in order to exploit the victims of the toxic waste dumping.



## **Chapter 8 – Cover-up and Denial: the Battle of Britain**

### *Introduction*

This chapter applies Cohen's (1993) three forms of denial to an analysis of cover up: (1) 'denial of the past', (2) 'literal denial', and (3) 'implicatory denial' (Cohen 1993: 108-110). These categorisations assist in unravelling the tactics employed by Trafigura in a cover-up of the dumping. 'Denial of the past' at an organisational level involves "the organised attempts to cover up the record of past atrocities" (Cohen 1993: 108). 'Literal denial' can also be revealed by organised cover-ups and involves "the simple lie or fraud where facts are accessible but lead to a conclusion which is knowingly evaded" (Cohen 1993: 109). 'Implicatory denials', "seek to negotiate or impose a different construction of the event from what might appear the case", one of the most common forms of which is 'denial of responsibility' (Cohen 1993: 110). Cohen's (1993) study was one of states and denial, and this thesis adopts the framework for the study of denial by corporations. Nothing in Cohen's work suggests a prohibition of the use of his ideas in a corporate setting. Cohen uses a comparison between states and corporations when outlining the counter-arguments to objections to the inclusion of state crime as a genuine criminological endeavour and argues that a state can commit crime and engage in denial despite its organisational nature – just as the corporation can.

The crime was directed from London (Leigh 2009a) and executed in Ivory Coast. The lack of response from the local NGOs prompted a field trip to Ivory Coast to survey the capacity of civil society, as represented by human rights NGOs, to struggle against the dominance of the market and state actors who perpetrated the state-corporate crime. Such a survey of the vast number of civil society actors in London (NGOs, unions, religious organisations, and media – traditional and 'new') was beyond the scope of this thesis, but the actions of a selection of civil society members gives an insight into the Gramscian struggle. Since "we can approach the process of denial through its opposite: the attempt to recover or uncover the past" (Cohen 1993: 109), the two responses of international civil society analysed by this chapter are a civil legal case against the corporation and a struggle for and against a cover-up. The relative power of the key actors within the arena of struggle (Gramsci 1971) was a determining factor in the success of goal attainment.

International NGOs and specialist law firms have made attempts to hold the corporation to account for the dumping. A network of civil society actors launched a coordinated attempt at labelling the corporation's actions as deviant. This group included: Greenpeace Nederland, BBC's *Newsnight*, de Volkskrant, the Norwegian Broadcasting Corporation (NRK), the Guardian, Al Jazeera and Amnesty International.<sup>372</sup> These organisations formed a strategic issue-based alliance, centred on the dumping. The law firms that associated with this network include Sherpa and Leigh Day & Co solicitors (Leigh Day). Sherpa is a Paris-based civil rights law association, who specialise in corruption in former French colonies (Neuberger 2011). Lasslett argues that for any resistance movement, the institutions it is able to work through '... in a specific conjuncture is a vital determinate of its strength' (Lasslett 2012: 4). The international NGOs along with their media partners shared information and strategised against the ongoing impunity enjoyed by the company to such an extent that a director of Trafigura implied that his organisation had been 'attacked' by this group:

It's an organised campaign by Greenpeace. We don't know why they are attacking us on this subject. (McElroy 2009)

Here we witness what Cohen refers to as an element of 'pure denial', as opposed to a 'pure justification' – the other typical tactic employed, according to Cohen (1993), by 'the official state discourse'. Here, just as a state may exclaim that the international community of states is "picking on us" (Cohen 1993: 104), the Trafigura director bemoans attention being drawn to the dumping by a community of international civil society organisations.

Throughout this chapter it will be seen that agents of Trafigura, in particular Carter-Ruck (media law firm) and Bell Pottinger (reputation managers), were deployed to great effect by the corporation. David Hooper, a former partner at the law firm Carter-Ruck, claimed that the firm's founder, Peter Carter-Ruck, "created the modern libel industry, was a dedicated liar and a reactionary with a lust for cash ... [and] ... he did for freedom of speech what the Boston Strangler did for door-to-door salesmen" (Hooper 2003). Bell Pottinger executives claim to have access to government, including the British Prime Minister, as well his chief of staff and closest advisor, and the British Foreign Secretary and that it is "possible to use MPs known to be critical of

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<sup>372</sup> Interview, International NGO Programme Leader London, April 2011 (Anonymous).

investigative programmes to attack their reporting for minor errors” (Newman and Wright 2011). Both firms, therefore, provide Trafigura with potential access to institutions of government and law through Carter-Ruck’s experience and expertise in the judicial realm and Bell Pottinger’s claimed access to sources of legislative and executive power (Newman and Wright 2011).

Approaching the concept of denial, as Cohen (1993) suggests, through its opposites of censure and public shaming, this chapter will look firstly at efforts to label the corporation as deviant; and secondly, at attempts that were made to sanction Trafigura.

### *Have the Company’s Actions Been Labelled Deviant by International Civil Society Organisations?*

The reaction of national Ivorian civil society organisations is detailed in Chapters 6 and 7, but, as we saw, various local human rights NGOs labelled the dumping as a deviant action by Trafigura. And the National Inquiry could be seen to have carried out a civil society function when it investigated and reported that “the Trafigura group, through the behaviour of its employees ... infringed the Marpol and the Basel Convention”.<sup>373</sup>

Trafigura’s actions have also been labelled as deviant by international civil society organisations, especially by international press organisations. Gramsci included the press and media, albeit in ambiguous terms, when he outlined the institutions of civil society (Gramsci 1971) and “some institutions like the media, while essentially based on market organisations, nonetheless have significant civil society elements” (Anheier and Carlson, undated). The Guardian, BBC’s *Newsnight*, the NRK and de Volkskrant shared the Daniel Pearl Award for Outstanding International Investigative Reporting<sup>374</sup> for exposing Trafigura’s dumping of toxic waste in Ivory Coast.<sup>375</sup> By way of contrast, the Ivorian press does not enjoy the same freedom as its European counterparts and there is a lack of independence of the media, with “many newspapers in Abidjan ... affiliated with a political party” (ICG 2004), as well as state repression of journalists critical of government (Gonto 2008).

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<sup>373</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan at page 48.

<sup>374</sup> The Daniel Pearl Awards are presented by the International Consortium of Investigative Journalists, a project of the Center for Public Integrity in Washington, DC.

<sup>375</sup> <http://www.journalism.co.uk/news/trafigura-investigators-honoured-with-daniel-pearl-award/s2/a538421/>

International civil society that responded critically to the dumping with statements or reports included the European Union (Dimas 2006) and the United Nations (UNHRC 2009: 10). European Commissioner Stavos Dimas described the dumping as “not only unethical in the most profound sense of the word, but ... criminal” (Dimas 2006) and he planned “to put forward a proposal to criminalise certain environmentally damaging practices such as the one perpetrated” (Dimas 2006). The European Parliament resolution made since the dumping states that:

... the toxic waste was dumped by a Greek-owned, Panamanian-flagged tanker leased by Trafigura Beheer B.V., a Netherlands-based company; whereas such sharing of responsibilities creates a systematic and unacceptable problem with regard to the enforcement of Community legislation.<sup>376</sup>

The UN Special Rapporteur concluded that “there seems to be strong *prima facie* evidence that the reported deaths and adverse health consequences are related to the dumping of the waste from the Probo Koala” (UNHRC 2009: 10). Bell Pottinger, acting for Trafigura, responded that the UN report was “inaccurate” and “potentially damaging” (quoted in Independent 2009). This is a form of implicatory denial, and by challenging the accuracy of the UN report Trafigura tried to construct a different version of events to that observed by the UN investigators. In early September 2006, the World Health Organization (WHO) sent a team “to support the Ministry of Health in dealing with an environmental health emergency caused by toxic waste” and “to determine the extent and severity of poisoning” (WHO 2006). This team included a clinical toxicologist, an environmental health specialist and a ‘further’ technical specialist (WHO 2006). The WHO is the largest international organisation involved with the incident, but they have yet to produce any report on the health consequences of the dumping and a search of the WHO website for ‘Trafigura’ reveals no results.<sup>377</sup> The WHO would have been in an excellent position to dispel the myths propagated by Trafigura in relation to the nature of the waste and its effects on the local population, and their failure to report on the matter requires further explanation.<sup>378</sup>

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<sup>376</sup> European Parliament resolution on the export of toxic waste to Africa, Official Journal 313 E, 20/12/2006 P. 0432 - 0434.

<sup>377</sup> [search.who.int/search?q=Trafigura](http://search.who.int/search?q=Trafigura), accessed October 2010.

<sup>378</sup> Email correspondence between the author and a scientist at the International Programme on Chemical Safety, Evidence & Policy on Environmental Health (EPE), World Health Organization, Geneva, from October to December 2011 has been frustratingly unsuccessful in determining reasons for the lack of a report – but one explanation offered was as follows: “it so happens, more for staff resource reasons than

The BBC's defence to the May 2009 libel action by Trafigura against *Newsnight's* feature on the dumping stated that:

It is admitted that the programme [*Newsnight*] alleged that Trafigura was culpably responsible for causing or permitting the unlawful dumping of highly toxic waste with an obvious potential to cause serious harm to the public as in fact it did. It is further admitted that the actual consequences alleged in the programme included miscarriages and injury to health of tens of thousands of people including sixteen deaths.<sup>379</sup>

However, despite being one of the loudest voices of censure, the BBC has succumbed to Trafigura's legal challenge. In December 2009 they settled the case, apologised for the allegations and paid Trafigura £25,000 in damages. This is more an indication of the power the oil trader is able to wield relative to that of the BBC than evidence of Trafigura's innocence. Pressure from Trafigura and its legal team led by Carter-Ruck appears to have been too much for the broadcaster to bear. In this situation, one can only speculate that the BBC's legal team made a cost-benefit analysis between the censuring of Trafigura and the potential costs of a libel claim by Trafigura against the BBC. The pressure applied by Trafigura was part of an orchestrated attempt to deny the past, and cover up (or neutralise) the public record of the dumping event.

When asked about its recidivist history by journalists, Bell Pottinger, acting for Trafigura, reported that "Trafigura has always done its business in an ethical and transparent manner" (Leigh 2009b). But the reality appears to be that the actions of Trafigura are frequently labelled as deviant (see Chapter 4) and very often opaque. Following the dumping, Trafigura instigated, as shall be seen, a cover-up operation which had both great successes and calamitous failures from the corporation's point of view. The next section reveals how Trafigura and its agents, including law firm Carter-Ruck and public relations consultants Bell Pottinger, constrained the activities of large sections of civil society through a wide-scale and systematic operation of all three forms

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anything else, that we didn't compile and publish a final report on the WHO mission to Cote d'Ivoire at the time" (email from a scientist at the International Programme on Chemical Safety, EPE, WHO, Geneva on 8<sup>th</sup> December 2011).

<sup>379</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 2.

of Cohen's (1993) denial that spanned a number of years. The section provides an overview of the tactics employed by Trafigura and reveals how over-zealousness in covering up the dumping actually precipitated wide-scale censure by the British public.

On the 6<sup>th</sup> of November 2006, Trafigura had hired Lord Fraser (at the recommendation of Lord Strathclyde, Leader of the House of Lords and former Trafigura director) to conduct an independent inquiry into the dumping incident, but he is not expected to publish any conclusions "in the near future" (Guardian 2009). The use by Trafigura of an 'independent' inquirer with strong links to the energy and commodities industry<sup>380</sup> and the subsequent extended delay in publication of any report can be seen as an attempt to literally deny the dumping by evading conclusions based on the available facts. In May 2007, *de Volkskrant* reported that the press officer of Trafigura, operating under the username '*Press Office T NL*', thrice attempted to alter the Dutch Wikipedia article about the *Probo Koala*, "with intent to clear the company's name" (Trommelen 2007a). This is denial of the past with an attempt to remove details of the dumping from the public record. But Wikipedia has proven itself a site of resistance and fought back against this attempted airbrushing of the past, with administrators locking the user's account. The '*Press Office T NL*' Wikipedia profile now contains the following 'warning' message: "if you use an account only for vandalism it can be blocked for an indefinite period of time".<sup>381</sup> Bell Pottinger claim to have "all sorts of dark arts" at their disposal, including teams that can manipulate Google results to "drown" out negative coverage of corporate human rights violations and "sort" negative Wikipedia coverage of clients and their activities (Newman and Wright 2011). This policy of altering public record and public perception involves all three forms of Cohen's (1993) denial: records are erased or suppressed, conclusions (or 'negative coverage') are evaded and a different construction of events is proposed. In August 2009, *de Volkskrant* reported that Trafigura had filed a case against the Dutch government in an attempt to keep secret the report of the Netherlands Forensics Institute (NFI) on the dumping that had been handed over to Leigh Day (Trommelen 2007b). The use of the legal system to implement Trafigura's policy of denial is detailed in the next section.

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<sup>380</sup> Lord Fraser claims to be on the payroll of JKC Oil and Gas plc, Alkane Energy plc, International Petroleum Exchange, London Metal Exchange and Total Exploration UK Ltd, and see [lordfraser.com/interests.html](http://lordfraser.com/interests.html), (accessed May 2012)

<sup>381</sup> Available at <http://nl.wikipedia.org/wiki/Sjabloon:Waarschuwing-Engels> (accessed October 2010).

As well as the unforthcoming independent inquiry by Lord Fraser, Trafigura also suppressed its own commissioned research into the cause of the deaths and illness reported in Abidjan. John Minton of Trafigura's scientific consultants Minton, Treharne & Davies, reported initially on the serious toxic consequences of the dumping. After the Minton Report was leaked by the *Guardian* (Leigh 2009), Minton became engaged in the whitewash of his own research and released a statement denying its findings: "I had no information on the quantity, composition or concentration of the chemicals involved" (Minton 2009: 1). This, however, was a literal denial of the initial Minton Report which clearly stated at the outset that "the combined slops from these washing operations were reported as follows: 150m<sup>3</sup> NaOH, 370m<sup>3</sup> treated naphtha and free water and 24kg ARI-100 EXL catalyst" (Minton 2006: 1). The report claimed that the waste was capable of causing the reported "severe human health effects" including death (Minton 2007: 7). The suppression of the report, as we will now see, was just one attempt by Trafigura to silence its critics.

### *British Media Silenced*

Further to the activities of suppression applied to the leaked report, there were efforts to use the British legal system to limit the freedoms usually enjoyed by the mainstream media. In this section, all three forms of Cohen's (1993) denial can be observed in an analysis of the cover-up.

In September 2009, the *Guardian* leaked the internal emails which showed that Trafigura was aware of the hazardous nature of the waste in advance of the dumping (Leigh 2009c). This was the first sign that civil society organisations were gaining traction in the struggle to censure Trafigura and the denial and systematic attempts at concealment were beginning to be revealed. The emails had been handed over to the *Guardian* by an anonymous London NGO<sup>382</sup> and highlighted the importance of the networks that the civil society actors are able to employ. Once in the hands of the media, the documents could potentially be used to censure the corporation much more effectively than had they remained with the NGO alone. The documents were further shared between other civil society and media organisations (such as Amnesty International, Al Jazeera, NRK),<sup>383</sup> and soon thereafter *Newsnight* reported again on the dumping, based on these newly revealed documents. The report evoked the following

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<sup>382</sup> Interview, London, April 2011 (Anonymous).

<sup>383</sup> Ibid.

response from Trafigura (through its legal team at Carter-Ruck): “Trafigura is concerned to note that the BBC is proposing to revisit these matters bearing in mind that they are, as you know, the subject of ongoing libel proceedings” (BBC 2009). They continued: “it is Trafigura’s position that insofar as it is suggested that these individuals died as a result of hydrogen sulphide exposure, that hydrogen sulphide cannot have come from or been generated or caused by the *Probo Koala* slops” (BBC 2009). The continued denial of responsibility, even in the face of documentary evidence, is testament to the legal power that the corporation were confident in deploying and on 12<sup>th</sup> December 2009 that confidence was given a further boost when the BBC deleted an online video of the *Newsnight* report as well as an associated BBC News online article. Angry bloggers, however, resisted the cover up and responded by reposting the video on YouTube (Eaton 2009).

By the end of 2009, national newspapers – a source of the public record – that had originally reported on Trafigura’s role in the dumping started to alter that record with corrections and apologies, despite a wealth of available evidence outlining Trafigura’s role (as seen in Chapter 5). This resulted in a bolstering of the discourse of Trafigura’s denial and the company have placed online copies of corrections and apologies from the *Times*, *Times Online* and the *Guardian* newspapers.<sup>384</sup> The *Times* (2009) correction, on Monday 7<sup>th</sup> September 2009, states that “the dumping was carried out illegally without Trafigura’s knowledge by an independent local contractor. Trafigura have always disputed that the dumping caused, or could have caused, the deaths and serious injuries referred to in the article ...” and adds “We are happy to put the record straight”. The *Times Online* (2010) correction, on Friday 30<sup>th</sup> April 2010, states:

We wish to make clear that the dumping was not carried out by Trafigura as the article may have suggested but by an independent local contractor without Trafigura’s authority or knowledge ... Furthermore, in September 2009 lawyers for Ivorians who were suing Trafigura over injuries allegedly caused by the dumping acknowledged that at worst the waste could only have caused flulike symptoms. ... We apologise for these errors.

In May 2009, the following statement appeared in print and on the *Guardian* website:

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<sup>384</sup> [http://www.trafigura.com/PDF/Major corrections and apologies.pdf](http://www.trafigura.com/PDF/Major%20corrections%20and%20apologies.pdf), accessed June 2012.



Our item headlined Success for the Guardian (26 April, page 2) erroneously linked the dumping of toxic waste in Ivory Coast from a vessel chartered by Trafigura with the deaths of a number of West Africans ... We apologise for our error. (Guardian 2010)

And the cover-up extended to other national publications in the UK. The *Independent* initially reported that the dumping "... caused at least 100,000 residents from ... Abidjan to flood into hospitals and clinics complaining of ... nausea, breathlessness, headaches, skin reactions and a range of ear, nose, throat and pulmonary problems [and] miscarriages, still births and birth defects" (Independent 2009). They concluded that it was "one of the worst pollution incidents in decades" (Independent 2009). These were very strong censuring statements but all have now been deleted from archives by the *Independent*.

The reasons behind these apologies, corrections, clarifications and deletions from the public record are obvious to some, and Monbiot argues that:

This could be one of the worst cases of corporate killing and injury since the Bhopal disaster, but much of the media wouldn't touch it with a bargepole. The reason isn't hard to divine: Trafigura has been throwing legal threats around like confetti. (Monbiot 2009)

The use of libel laws and aggressive lawyers has been a success for Trafigura in suppressing information about the dumping that may have an effect on public opinion, and this effect persists to the present. Caroline Lucas, the first Green Party member to be elected to the UK parliament, in her first speech to parliament, took the opportunity to raise the case and noted the continuing media 'blackout' on the dumping:

Last year, hon. Members from both sides helped to shine a light on the actions of ... Trafigura, and the shipping of hazardous waste to the Ivory Coast. There was particular concern that the media in this country were prevented from reporting the issues fully and fairly. That remains the case, for new legal actions concerning Trafigura have been launched in the Dutch courts and are being reported widely in other countries but not here. (Caroline Lucas 2010)

The event that allowed members of parliament to 'shine a light' on the dumping was in

fact a tactical error by Trafigura, the kind of error on the part of state or corporate agents that Lasslett argues might “... open up a horizon of opportunities for resistance movements” (Lasslett 2012a). Trafigura’s decision to take out a super-injunction is an example of a ‘fundamental miscalculation’ that opened the way for civil society to censure the actions of Trafigura, on this occasion not through the mainstream media, but through the ‘blogosphere’<sup>385</sup> (Rusbridger 2009).

### *Super-Injunction*

On 12<sup>th</sup> October 2009, Trafigura’s legal firm Carter-Ruck in furtherance of the policy of cover-up applied to the court for an injunction to prevent the *Guardian* newspaper from reporting on or about a parliamentary question by Paul Farrelly<sup>386</sup> (see below) (Leigh 2009c). The injunction further stipulated that the *Guardian* could not report on the question’s existence. This extreme form of censorship has led such injunctions to be known as super-injunctions (Steyn 2010). Alan Rusbridger, the editor of the *Guardian*, expressed surprise at the fact that his newspaper might be in contempt of court for releasing the document: “we had never encountered a situation when we had been forbidden for reporting on parliament” (Rusbridger 2009).

The super-injunction was a turning point in the struggle over corporate censure, and was ultimately unsuccessful as a tactic of denial. The Guido Fawkes political blog identified Paul Farrelly’s written question as likely to be linked to the super-injunction:

To ask the Secretary of State for Justice, what assessment he has made of the effectiveness of legislation to protect (a) whistleblowers and (b) press freedom following the injunctions obtained in the High Court by (i) Barclays and Freshfields solicitors on 19 March 2009 on the publication of internal Barclays reports documenting alleged tax avoidance schemes and (ii) Trafigura and Carter-Ruck solicitors on 11 September 2009 on the publication of the Minton report on the alleged dumping of toxic waste in the Ivory Coast, commissioned by Trafigura. (Guido Fawkes 2009)

In a letter to the Speaker of the House of the House of Commons, Alan Rusbridger stated that:

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<sup>385</sup> The term is here taken to refer to a loose community of independent internet-based commentators, bloggers and micro-bloggers and includes the concepts of the ‘Twitterverse’ or the ‘Twitterati’.

<sup>386</sup> Labour, UK Member of Parliament for Newcastle-under-Lyme.

[Carter-Ruck] asserted that the Guardian would be in contempt of Court and sought an immediate undertaking that we would not publish. The letter also stated that Carter-Ruck did not even accept that the publication by Parliament of Mr Farrelly's question placed the existence of the injunction in the public domain!<sup>387</sup>

Rusbridger argued that the development was a regression of free speech versus censorship: "in some ways we're going backwards, I think after Thalidomide, after the Pentagon papers, we thought that the notion of prior constraint was gone" (Rusbridger 2009).

At around noon on 13<sup>th</sup> October 2009, the day after the injunction was obtained, Trafigura (via Carter-Ruck) withdrew its claim that the *Guardian* reporting on the parliamentary debate that revealed the injunction's existence would be contempt of court (Leigh 2009d). This climb-down was as a result of Farrelly's question having been released into the public domain by bloggers, who are not subject to the same restrictions as mainstream media (BBC 2011). The *Guardian* claims that the super-injunction was neutralised by "a combination of legal sense and digital communications" (Reidy 2010). *Wikileaks* had previously released the Minton report into the public domain (Smith 2010) but the online response to the super-injunction raised both the report's and Trafigura's profile. Rusbridger recalls the flurry of activity: "The blogosphere just went berserk; I mean, I've never seen anything like it. Over the last sixteen hours, I've never seen this amount of activity on *Twitter*, of people really upset by it" (Rusbridger 2009). One tweet at the time read: "The Twitterverse is going mental for #trafigura" (Massie 2009), referring to the hashtag, '#trafigura'. The application for the super-injunction and the subsequent reaction was "a fantastic PR own goal" (Rusbridger 2009) for the company, and raised their profile in the public eye overnight: "... I think most people, yesterday wouldn't have heard of this company, Trafigura" (Rusbridger 2009). Matthiesson (2010) argues that the 'spectacular public relations fallout' from the Trafigura case (and another case involving a soccer player) may force media lawyers to "reconsider whether super-injunctions are the most advisable method to protect their client's interests in the first place" (Matthiesson 2010: 153).

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<sup>387</sup> Letter of Alan Rusbridger, editor of the *Guardian*, to John Bercow MP, available at <http://www.scribd.com/doc/21187200/16-October-2009> (accessed 16/02/2011).

The reaction of the UK state to the super-injunction contrasts to apparent inaction in the previous years to Trafigura's aggressive use of libel laws to suppress journalistic reports. This may have been a direct result of the publicity and public outrage displayed online. Alternatively, an apparent reason is that the injunction was not an attack on civil society – as the libel campaign had been – but an attack on parliament, an institution of the state. David Heath<sup>388</sup> argued in the House of Commons that:

A fundamental principle of this House is now being threatened by the legal proceedings for an injunction and the consequent proceedings for contempt of court in respect of injuncted material. As you know, we have enjoyed in this House since 1688 the privilege of being able to speak freely. (Hansard 2009c)

Lord Judge<sup>389</sup> reiterated the fact, couching the injunctions in terms of the power struggle between the judiciary and parliament: “I should need some very powerful persuasion indeed that it would be constitutionally proper for a court to make an order to limit discussions in parliament” (Rogerson and Dean 2009). Within a matter of months, in April 2010, a judicial committee headed by Lord Neuberger was set up in order to examine super-injunctions and in May 2010 reported back that the law and judiciary functions as it should (Neuberger 2010). Rusbridger argued that the use of the super-injunction was about cover-up activities:

This is really just about embarrassment, there's no great legal principle here. The company didn't want the world to know that they were clamping down on newspapers, it was embarrassing for them, but the courts shouldn't be so spineless as to agree to these super-injunctions. (Rusbridger 2009)

Moore (2009) reported how *Twitter* users claimed that Trafigura's prompt withdrawal of the injunction was a victory for press liberty, and quotes a 'typical' tweet: “Hurrah for free speech and freedom of information ... don't mess with the people” (quoted in Moore 2009). Another read: “The Twitterati and the Blogosphere have prevailed in the great Battle of Trafigura” (Massie 2009). Lord Neuberger, the most senior civil judge in England and Wales, took a different view and claimed that these types of online technology are “totally out of control” (BBC 2011). However, if the online community of civil society actors were under the stronger control of the state, and under the same

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<sup>388</sup> Liberal Democrat, UK Member of Parliament for Somerton and Frome.

<sup>389</sup> The Lord Chief Justice.

restrictions as the mainstream media, this injunction may not have come to light and a chance to censure Trafigura may have been missed.

The struggle to label Trafigura's actions as deviant was only successful after elements of civil society capitalised on a miscalculation by the corporation. However, the censure focused on an attempt by the corporation to 'gag' the British press from reporting on parliament. The subject matter of the injunctions, the damning report on the dangers of the waste dumped in Abidjan, received less attention.

*Have These Organisations Attempted to Institute Sanctions Against the Company?*

In Ivory Coast, as argued in Chapter 6, there were no reported attempts by the domestic NGOs to seek sanctions against Trafigura through the courts. However, international NGOs have made repeated attempts to engage the legal systems of Europe (specifically the Netherlands, France and the UK).

Greenpeace Nederland reported the dumping to the Dutch public prosecutor who claimed to lack jurisdiction (Day 2010), a problem of jurisdiction as discussed in Chapter 1. Greenpeace Nederland thereafter filed a complaint,<sup>390</sup> as an interested party,<sup>391</sup> against Dutch prosecutors for failing to prosecute Trafigura, its CEO and Puma for their role in the dumping. The charges sought included murder, gross maltreatment, manslaughter, grievous bodily harm and work- or profession-related criminal offences, forgery and membership of a criminal organisation<sup>392</sup> (Böhler 2009). On the criminal liability of Trafigura as subject of the criminal justice system, Greenpeace Nederland argued that "this legal person can and must be called to account for the offences" (Böhler 2009: 15). This statement tried to pre-empt an argument against the legal individual-organisational problem discussed in Chapter 1.

The law association NGO, Sherpa, pressed for a criminal prosecution in France, but were unsuccessful. According to Day, "The French authorities said, look, we've got no jurisdiction in the Ivory Coast. We cannot realistically send across examining magistrates ... to Abidjan" (Day 2010). This failure to prosecute, for whatever reason, is a failure of the operability of control on an institutional level (Kauzlarich and

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<sup>390</sup> Under article 12 of the Dutch Code of Criminal Procedure.

<sup>391</sup> Dutch law allows organisations with a direct interest in a case to lodge these types of complaints. Greenpeace evidenced their interest by reference to their Articles of Association.

<sup>392</sup> Articles 287, 302, 307, 308, 309, 225 and 140 of the Dutch Penal Code (respectively).

Kramer 1998) and as Welch maintains, “state-corporate crime persists because it is afforded impunity against prosecution” (2009: 352).

However, the Dutch public prosecutor pursued Trafigura for crimes<sup>393</sup> committed in Amsterdam port before the dumping (see also Chapter 5), namely, failing to inform the Dutch authorities of the nature and origin of the waste and forgery of documents designed for that purpose, and exporting hazardous waste.<sup>394</sup> In 2010, the company was convicted and fined €1 million by a Dutch judge, and cleared of a forgery charge. The captain of the *Probo Koala* was sentenced to a five months (suspended) prison term for forgery (Greenpeace 2011).

Greenpeace Nederland also lodged a complaint with the Dutch advertising authority for advertisements released by Trafigura that suggested that the High Court in London had ruled that the toxic waste from the *Probo Koala* could not cause any fatal or otherwise serious health conditions. Greenpeace argued that “Trafigura attempted to falsely create the impression that a judgement had been made in favour of the company” (Greenpeace International 2010). The advertisements were an attempt by the corporation at implicative denial which seeks “to negotiate or impose a different construction of the event” (Cohen 1993: 110), by claiming that an agreement in the *Motto* case (see below) between the parties was actually the finding of a British judge.

All of the above cases took place in the Netherlands and the consequences were the application of sanctions to Trafigura for deviant behaviour. None, however, were concerned with the toxic waste dumping in Abidjan. A civil case in the UK looked more promising.

#### *Motto & Ors v Trafigura*

In October 2006, Greenpeace asked Leigh Day to provide legal assistance to victims who had contacted them (Neuberger 2011). This is an illustration of the value of the networks that the international NGOs were able to employ and which Ivory Coast NGOs were isolated from. Leigh Day were also approached directly by Chief Motto,

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<sup>393</sup> The Economic Offences Act, the Environmental Management Act, the Environmentally Hazardous Substances Act, EEC Regulation No. 259/93 and the Dutch Penal Code (Böhler 2009).

<sup>394</sup> Charges against Trafigura Beheer B.V., Amsterdam public prosecutor’s office, no. 13/ 846003-06.

Chief of Djibi Village (Neuberger 2011), who told the BBC that all two thousand villagers became ill, and three people had died<sup>395</sup>.

Leigh Day originally had 12 Ivorian clients and by early 2007 they were forecasting that there would be between 3,000 and 5,000 claimants. The final figure in the case of *Motto & Ors v Trafigura*<sup>396</sup> of 29,614 claimants was, however, to dwarf those early predictions (Neuberger 2011). By the time the claim form was filed it was the largest collective action personal injury claim ever filed in England and Wales (Dunt 2009). In October 2008, Trafigura agreed to no longer defend its actions with regard to the dumping (Dunt 2009). Leigh Day called the decision a ‘climb-down’, and Martyn Day reported:

I am pleased that Trafigura have seen sense and accepted that the game is up. For the last two years they have tried to pull the wool over the eyes of the world, in terms of their actions. (Day 2008)

The extended campaign of implicative denial described by Day is part of the overall cover-up discussed above but this statement too has now been deleted from the Leigh Day website. An international media correspondent based in West Africa was told by Day that Trafigura conceded that they had a duty of care to the victims and had breached that duty and were likely to settle out of court in the spring of 2009.<sup>397</sup> Leigh Day explained that:

In early September [2008] we served them a whole host of documents and with a dossier of requests regarding their defence, which I think were unanswerable ... They realised the game was up. (Dunt 2009)

Day argues that Trafigura was “forced into taking that step in the face of overwhelming evidence against it” (Day 2008). In September 2009, Trafigura reached a settlement agreement which included payment to 30,000 victims and their families of about £1,000 each (Leigh 2009c; Moore 2009). The judge ordered that the £30 million settlement (Neuberger 2011) be held in trust by Leigh Day, “exclusively and solely for the

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<sup>395</sup> Claim No. HQ 09X02050; Trafigura Limited (Claimant) and British Broadcasting Corporation (Defendant); Defence (of 11/09/2009) against claim issued on 15<sup>th</sup> May 2009 in the High Court of Justice, Queens Bench Division, drafted by Andrew Caldecott QC and Jane Phillips, and signed by Stephen Mitchell, Head of Multimedia Programmes at the BBC (available at <http://wikileaks.org/file/bbc-trafigura.pdf> or [mirror.wikileaks.info/leak/bbc-trafigura.pdf](http://mirror.wikileaks.info/leak/bbc-trafigura.pdf), accessed 16/02/2010), at page 2.

<sup>396</sup> [2009] EWHC 1246 (QB) Case No: HQ06X03370.

<sup>397</sup> Interview, Abidjan, September 2010.

claimants” (quoted in Verkaik 2009). Trafigura paid £30 million into a bank account in Abidjan on 23<sup>rd</sup> September 2009 but an injunction granted by an Ivorian court in favour of victims organisation CNVDT has diverted this money (see Chapter 7 for details). This unexpected intervention meant that the distribution was severely delayed and “even now it has not been completed” (Neuberger 2011). As well as the problems with the injunction granted by the Ivorian judiciary, the case posed other serious difficulties. The cost of running such a case is prohibitive; Leigh Day served a bill of costs on Trafigura of £104,707,772.72, including an insurance premium of over £9 million (Neuberger 2011). It is interesting to note that this level of legal costs would have been enough to compensate another 10,000 victims had Trafigura not prolonged the case.

As an act of censure, the *Motto* case was generally unsuccessful and has in fact further bolstered Trafigura’s denial of the toxic waste dumping. As it was settled out of court and that settlement contained a confidentiality clause, documents held by the law firm after extensive investigations and Trafigura’s defence have not become public record and could not be used as data for this study. Furthermore, the ‘global’ settlement “will mean that claims of more serious injuries caused by the waste – including miscarriages, still births and birth defects – will now not be tested” (Milmo 2009). The author asked Martyn Day about this settlement agreement in 2010 and his response is quoted in full for what it reveals about the capacity of a powerful corporation to silence critics even as it admits guilt:

Thomas MacManus:

When talking to victims they would say: “Why has ‘Mr Martin’ signed an agreement with Trafigura to say that Trafigura had nothing to do with it? Why would he get involved in such a conspiracy with the company?” How would you answer those questions?<sup>398</sup>

Martin Day, partner at Leigh Day:

I can’t talk massively about it, as I say due to the confidentiality agreements. But the primary issue here, and it’s a great difficulty when you’ve got a ... big group claim. Acting for 30,000 people when we entered into negotiations with Trafigura, part of what they wanted was confidentiality. And we then had to

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<sup>398</sup> Question asked by the author at Symposium on Business and Human Rights – University of Essex, 17<sup>th</sup> September 2010.



work out, well was this a decent deal for them taking everything on board and we had to feel in the end it was. We went out to Abidjan in September 2009 and we managed to meet with 25,000 of our clients in two weeks. We gave them all the opportunity to say 'yes' or 'no' to the agreement knowing of the confidentiality, knowing of the position. Every single one, bar none, signed the deal: that they wanted to have the money in their pocket rather than some of the concerns that have now been raised. It's difficult. I hate confidentiality agreements. I think in the end it's important that society learns from what has happened and that everything is open book, everything is transparent but where a defendant comes to you as a lawyer and says look we are offering you 'X' but a part of the deal is that it's confidential, you have to put that deal to the client, you can't say well sorry, we don't like the deal, we're not going to agree to it.

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As I say for me, if we had this situation in the [United] States [of America] you can't actually sign something in these sorts of deals as you can in the UK and I would feel much more easy if the Law Society was to ban, for example, that you cannot. Again one of the parts of the deal is we can't continue acting for anybody else in the Ivory Coast, that was part of the deal we had to sign. In the States that's simply not allowed, as a part of any deal. I think that would be a massively useful thing if the Law Society was to say, as a solicitor you simply can't enter that deal. Well, that would be great because it would then cut off the area that is such a major part of what happened and I think it's a retrograde step for our society because it means that we don't learn all the lessons of what has happened.

The agreement contained the following phrase: "the claimants now acknowledge that the fumes could, at worst, have caused only a range of short term relatively low level flu-like symptoms and anxiety" (Neuberger 2011). Here, from an implicative denial point of view, we are presented with a 'denial of responsibility' and a "different construction of the event from what might appear the case" (Cohen 1993: 110). Furthermore, the agreement precludes Leigh Day from representing any more clients on the issue. Both are factors that block future compensation claims by the victims in Abidjan that were not part of this case.

As a legal sanction, the case is therefore also a failure: Trafigura can still claim to be without liability for the dumping. The settlement was part of the larger scheme of denial and ensured that the actions of Trafigura would not be considered by a law court in this case, with all the media attention that entails (Dunt 2009).

### *Conclusion*

This chapter analysed the reaction of international civil society actors to the dumping and sought to assess the capacity of these actors to label the corporation as criminal and to sanction the state-corporate crime that took place in Abidjan. The chapter examined two events: the first, the attempt by mainstream British media to censure Trafigura for the dumping; and the second, a 30,000-claimant personal injury case filed against the corporation in London. Both events were major attempts at censure or sanction, and the analysis reveals the power struggle between the corporation engaged in denial and civil society organisations trying to censure and sanction the company is played out using the apparatuses of the state and primarily the civil legal system.

By employing all three forms of Cohen's (1993) theory of denial – (1) 'denial of the past', (2) 'literal denial', and (3) 'implicatory denial' – the cover-up (and especially the subsequent 'silencing' of media voices) is analysed. The 2007 attempt by Trafigura to alter the Dutch Wikipedia article about the *Probo Koala* and the 2009 case against the Dutch government to suppress an NFI report on the dumping are clear attempts to erase the dumping from the public record. When the record cannot be suppressed, the corporation has resorted to aggressively initiating libel legal threats through a British law firm including the 2009 libel action against *Newsnight*, which was settled for £25,000 along with an apology to Trafigura. The corporation even tried to suppress its own commissioned research using a super-injunction. They also employed firms like Bell Pottinger who claim to employ 'dark arts' to protect reputations, and Bell Pottinger insisted that the 2009 UN report (UNHRC 2009) was "inaccurate" (Independent 2009). We can see that the discourse presented by Trafigura follows what Cohen (1993) calls 'a complete spiral of denial':

First you try 'it didn't happen'. There was no massacre, no one was tortured. But then the media, human rights organisations and victims show that it does happen: here are the graves; we have the photos; look at the autopsy reports. So

you have to say that what happened was not what it looks to be but really something else. (Cohen 1993: 102)

Thereafter, the audience is subjected to the next stage of the spiral: “if it did happen, ‘it’ is something else” (Cohen 1993: 103). The final stage of the spiral of denial is ‘justification’. Eric de Turckheim, a Trafigura director, was interviewed by Jeremy Paxman on the BBC’s *Newsnight* programme on 16<sup>th</sup> August 2007,<sup>399</sup> and de Turckheim appeared to be applying Cohen’s first stage of denial, arguing that “this [waste] material was not dangerous for human being [sic]; smelly, but not dangerous”. Trafigura later argued that the dumping was carried out illegally and without its knowledge by an independent local contractor (Milmo 2009), thereby denying the company’s responsibility but suggesting that even ‘if’ the waste were dangerous it was not in fact dumped by Trafigura. De Turckheim’s 2007 television appearance also reveals Trafigura’s attempts at the ‘justification’ stage of Cohen’s spiral model when he argued that “[t]he discharge of slops is a routine operation that is carried out worldwide, and Abidjan is a sophisticated port fully equipped to handle such waste” (Newsnight 2007). This commercially orientated justification for the discharge of the waste in Ivory Coast conflicts with the report of the National Inquiry which insists that the lack of port facilities available at Abidjan would have been discovered by minimal due diligence.<sup>400</sup>

Opposing the denial of Trafigura are NGOs, members of civil society that act as a social audience. As with this thesis, Cohen focuses on observer groups who are ‘ideologically predisposed’ to human suffering: “my concern is not the actor but rather (back, in a curious way, to labelling theory!) the audience” (Cohen 1993: 104) and researches human rights organisations (national and international) to explore how they overcome what he calls “barriers of denial”. One of the major advantages available to international NGOs is their capacity to access international networks of civil society actors (including socially orientated law firms, journalists and other NGOs) which ultimately strengthens their capacity to label actions as deviant or criminal. Domestic Ivorian NGOs assume the role of a social audience that could interpret the legality, criminality and human rights impact of the dumping and to apply relevant sanctions to the criminal actors. However, as seen in Chapter 6, the failure of domestic NGOs to mount a comprehensive resistance was the result of a combination of internal and external factors. Internally, a

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<sup>399</sup> Available online (YouTube) at <http://www.youtube.com/watch?v=tQBS82kFQjE>, accessed June 2012.

<sup>400</sup> The report of the National Commission of Inquiry on the Toxic Waste in the District of Abidjan.

lack of institutional funding, resources and quality personnel was reported during interviews. Scarcity of resources limits the amount of time, money or effort that an NGO can dedicate to any project, and a lack of funding dedicated to enhancing capacity (as most funding is project based; see discussion in Chapter 6) ensures that the effects of resource limitations are propagated. Externally, an improved ability to collaborate with, and pool resources and expertise with, other domestic NGOs as well as maintaining a working relationship with elements of the state might have aided resistance to the dumping by providing a platform to overcome the barriers to denial and sanction the corporation through NGO action and/or through mechanisms of the state. By contrast, international NGOs are generally well funded and resourced and attract high-quality personnel. Furthermore, they displayed a capacity to form networks with other civil society actors across national boundaries and enjoyed access to the sanctioning mechanisms of the state, and most importantly various domestic legal systems. International civil society organisations, especially Greenpeace (who initially became concerned with this case because of the resultant environmental damage), were successful in publishing reports and mounting legal cases in the Netherlands as part of their censoring campaigns against the corporation. However, as this chapter has demonstrated, even after a network of civil society actors formed a strategic issue-based alliance and launched a coordinated campaign in the UK to label the corporation's actions as deviant, the 'barriers of denial' that are provided by the current configuration of the UK legal system are formidable.

## Chapter 9 – Conclusion

This thesis has documented the intersection of crimes perpetrated by three sectors of society (state, corporate and civil society) in the case of Trafigura's dumping of toxic waste in Abidjan, Ivory Coast in August 2006. It is an exploration of criminogenic relationship between the state and corporations, and the state and civil society. The thesis argues that the role of the Ivorian state was instrumental to the dumping crime, the impunity afforded Trafigura and the subsequent 'criminalisation'<sup>401</sup> of a section of civil society. One important finding of this thesis is the conclusion that a criminal state can act as a nexus for crimes by all three sectors of society; facilitating crime by actors in both the market (state-corporate) and third (commodification of victimhood) spheres of society. Gramsci's notion of civil society provided the theoretical framework through which to understand the relationship between civil society, the Ivorian state and Trafigura and, importantly, the relationship between competing organisations within civil society.

Research undertaken in London and Abidjan revealed the impunity that was enjoyed by the Ivory Coast government (and its agencies) and Trafigura for this state-corporate crime. This impunity was underpinned by the power of the corporation and by failures of both domestic and international legal regimes as well as civil society organisations that might have been expected to have labelled and challenged the crimes. This thesis set out to investigate the reasons for the apparent impunity afforded to Trafigura up to six years after the dumping of toxic waste in Abidjan in August 2006. At the time, UN Special Rapporteur on Toxic Waste, Okechukwu Ibeanu, took the commonly held view that civil society was well placed to assist the Ivorian state with the consequence of the dumping: "I would like to call on the Government to include civil society and victim associations in the follow-up of this crisis" (Ibeanu 2008). To some extent this corresponds with Green and Ward's (2004) approach, namely that civil society can play a significant role in applying censure and sanction to state-corporate crime. However, research for this thesis found that the same victims' organisations that Ibeanu was calling upon had in fact become engaged in forms of organisational crime, facilitated by a criminal state. These victims organisations were engaged in a process described in this

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<sup>401</sup> Here the term 'criminalisation' is not used in the traditional sense of describing the processes by which behaviours and individuals are transformed into crime and criminals through the application of labels but rather the process by which organised state-crime insinuated itself in a realm of civil society and engaged in practises of theft and extortion behind a human rights veneer.

thesis as ‘commodifying victimhood’ – specifically, charging victims of the dumping a fee in return for a promise of participation in some notional future legal compensation claim. In so doing these civil society organisations contributed in significant measure to the mechanisms of impunity which surrounded Trafigura’s crime, and to the victims’ suffering.

This research originally aimed to survey human rights NGOs in Ivory Coast in order to determine the factors that may inform their reaction to large scale corporate crime. The data gathered during field work in Ivory Coast revealed that these organisations were severely limited by both internal and external factors, by the disproportionate power of the corporate entity and by organisational crime perpetrated by groups masquerading as members of civil society. In addition the economic and political environment in which the NGOs found themselves, a lack of intuitional funding, no access to skilled personal and a criminal state precluded domestic NGOs from carrying out potential sanctions. A further surprising feature was the isolationist stance of the NGOs; and, as the local victims organisation Club UA have reported, Ivorian NGOs do not have a record of collectively resisting objectionable government<sup>402</sup> policies. However, and perhaps most significantly, mainstream Ivory Coast NGOs deliberately chose not to engage with the struggle of victims of the dumping in order to avoid an association with the government-backed victims organisations who were taking advantage of the general impunity afforded to Trafigura and the Ivorian state.

Responsibility for impunity, however, did not rest with the Ivory Coast state alone, nor with its apathetic and criminally organised sector of domestic civil society. It is also argued in this thesis, as the discussion in Chapter 8 revealed, that one of the primary reasons for a lack of censure by civil society of Trafigura in the UK was a fear of the corporation’s legal and financial might (in the context of the UK’s libel laws). As British political commentator George Monbiot noted, “The law of defamation ... discourages people from investigating abuses of power” (Monbiot 2009). The Gramscian conception of ‘struggle’ was a common theme and was employed by various actors when referring to the battle for censure that raged in the UK in the face of a cover up, which one commentator dubbed “the great Battle of Trafigura” (Massie 2009). But it is not simply Trafigura’s financial and legal prowess that inhibits actions against the corporation. There are, at least perceptually, more sinister factors in play. When I

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<sup>402</sup> Interview, Abidjan, September 2010 (Club UA 2010).

proposed the idea of a private criminal prosecution in the UK against Trafigura for its role in the dumping, a senior executive at a very influential international NGO reported; “I’ve dealt with that company. If you do that, I will look out for you floating in the Thames.”<sup>403</sup> It is therefore likely that Trafigura’s aggressive reputation has had a cooling effect on academics and other commentators, similar to that observed in relation to the UK press.

In the six years that followed the dumping, a limited academic literature has focused on the crime. Scientific articles of particular interest include Bohand et al’s (2007) empirical study of the medical evidence, which argues – rather uncontroversially – that the export of industrial waste may result in public health consequences. Goode’s (2010) presentation at the British Criminology Conference – entitled *Is my Cousin a Mass Murderer?* – sought to gauge the reaction of family members of a Trafigura executive to the news that he was involved in the deaths of Ivoirians. The paper provides a useful insight into these types of crime on the individual level of analysis. White’s (2008) *Toxic cities: globalizing the problem of waste* sought to raise the profile of the dumping but ultimately does not provide any analysis of the factors contributing to the disaster.

Legal academics have published on the super-injunction in the UK and the breach of environmental law that occurred in the Netherlands, using the dumping as a practical example. Matthiesson’s (2010) media law analysis argues that super-injunction gagging-orders are, “unwieldy, draconian and disproportionate” (Matthiesson’s 2010: 153). Carney (2010) too examines the super-injunction but his research is primarily a public law examination of parliamentary privilege. Legal critiques of the international waste control regime, and the Basel convention in particular, were authored by Eze (2008), Cox (2010) and Pratt (2010). And Sachs (2008) examines the limited (as discussed in Chapter 8) possibilities for a tort remedy to crimes similar to the dumping. Dutch court cases concerning Trafigura’s breach of environmental law at Amsterdam Port have received some attention from Verschuuren (2010) and Jesse and Verschuuren (2011). More ambitious is Manirabona’s (2011) article (in French), which argues that these types of environmental crimes may be better conceptualised as international crime (and specifically crimes against humanity).

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<sup>403</sup> As researchers too are subject to intimidation and threats, a special request will be filed with this thesis to restrict access for two years for reasons of personal safety.

The thesis also contributes to the literature on African civil society, and Ivorian civil society in particular (see Chapter 4), on which there is very little literature available. The finding presented here temper arguments made by Shastri (2008) and Lawrence and Nezhad (2009) as to the particular strengths which NGOs in Africa display. The data collected confirms arguments made by Hearn (2007), namely that the African NGO sector is characterised by external financial dependence and an external orientation.

Outside academia, two popular books have also been written. The first, published in French by Dussol and Nithart (2010), recalls the voyage of the Probo Koala and circumstances surrounding the dumping and is written in a distinctly journalistic manner. The book reads like a thriller novel, and provides little academic analysis. The second, a Dutch language publication by Vink (2011), proposed, contrary to the available evidence presented above, the theory that the dumping was not harmful, did not cause any deaths and any reported symptoms were psychosomatic.

Two other major publications by NGOs worth making reference to include Amnesty International & Greenpeace's (2012) report, *The Toxic Truth*:

A three-year investigation by Amnesty International and Greenpeace has uncovered the central reason for the tragedy that unfolded in Abidjan: in the absence of effective law enforcement, one company acted to secure corporate profit without regard for the human and environmental costs. That company was Trafigura. (Amnesty International and Greenpeace 2012: 3)

And the Paris-based association of NGOs, FIDH<sup>404</sup>, published report (in French) of April 2011, which outlines how this crime was dealt with by the domestic and international justice systems. While rigorously researched, neither NGO publication provides a comprehensive or analytical view of the dumping.

In the absence of any robust alternatives, this thesis provides a criminological case study that can be added to a growing library of corporate crime and state-corporate crime case studies. The thesis thus contributes to the empirical literature on state and state-corporate crime, and modestly develops our understanding of the means by which powerful entities are able to avoid censure and punishment.

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<sup>404</sup> <http://www.fidh.org/Cote-d-Ivoire-In-view-of-the-intensification-of>, accessed November 2011.



As discussed in Chapter 1, the literature on state-corporate has grown apace in recent years (Tombs and Whyte 2002; Kauzlarich et al 2003; Kramer and Michalowski 2005; Lasslett 2010b) but few scholars have detailed the censure and sanctions applied to corporations after a criminal event. Instead, empirical studies have been preoccupied with explaining the factors that resulted in the crimes. One criticism which might be levelled at an approach focusing on sanctions and censure, rather than on the failure of a control regime (Kramer et al 2002), is that it is primarily backward looking and does not seek to prevent crime. However, the impunity effectively granted to Trafigura through its cover-up campaign has permitted the corporation to walk away from its victims. There was no requirement for Trafigura to clean up the dump sites, provide health care for the victims or compensate the victims or families of the dead. Furthermore, the impunity from prosecution ensured that the corporation's criminal behaviour persisted (Welsh 2009). A more recent example of Trafigura's behaviour highlights both the effect of its continued impunity as well as the potential of civil society organisations to resist corporate power. After leaving Abidjan in August 2006, the *Probo Koala* sailed to Estonia. The ship was boarded by environmental officials upon arrival at Paldiski and it passed inspection. On 25th September, Greenpeace activists blockaded the ship with an icebreaker and rubber rafts and issued demands to the Estonian authorities to immobilise the *Probo Koala*. The following day the *Probo Koala* unloaded waste that was found to contain the same substances that had been dumped in Ivory Coast the previous month (Helsingin Sanomat 2009). There were also preliminary reports of high levels of toxins found in blood samples taken from crew members (New Europe 2006), up to sixty times the normal level according to Dimas (Helsingin Sanomat 2009). The police impounded the ship and a criminal investigation was initiated. This incident is indicative of the systemic recidivist nature of the Trafigura corporation. A month after dumping in Ivory Coast with injurious effects, the corporation again attempted to deviantly offload toxic waste – concealing the true nature of the waste from an unsuspecting port authority. Estonia's Minister of the Environment (Villu Reiljan) reported that he was, “convinced that the ship tried to take advantage of the lack of experience of the new EU member state, and to leave its bilge and waste water, which contained toxic substances, in Paldiski” (Helsingin Sanomat 2009). EU Commissioner for the Environment, Stavros Dimas, visited the “toxic crime scene” to give his, “full support to the efforts of the Estonian authorities in their quest to prosecute the criminals who perpetrated this crime” (Dimas 2006). Dimas responded to Greenpeace's actions

with: “let me extend my thanks to Greenpeace which took a decisive step by preventing the departure of the *Probo Koala*” adding, that this kind of activity, “is exactly the kind of role we expect from civil society” (Dimas 2006).

The findings presented here suggest that scholars of state crime should adopt a more cautionary approach to civil society’s capacity to label, censure and sanction than that suggested by Green and Ward (2004). Moreover this thesis reveals that in the case of this particular example of state-corporate crime, civil society as an agency of censure and sanction played a distinctly retrogressive role. Here, in fact, state crime facilitated organised crime’s insertion into civil society through a process I define as ‘the commodification of victimhood’ and, as a result, ensured that impunity was virtually guaranteed for corporation and government. The implications of the findings of this thesis suggest new directions of research for criminology, in particular a more penetrating study of the concept of civil society.

This thesis is not proposing that civil society should be abandoned as a mechanism for the sanction of corporate and state criminality, rather it argues for a more nuanced and more critical approach to civil society actors. As Grugel has argued: “NGOs are not ‘perfect’ organizations always on the side of poor or marginal groups; nor are they always effective instruments of change” (Grugel 2000: 103). Civil society organisations – whether in Ivory Coast, Africa or elsewhere – can be an important challenge to the power wielded by large, powerful and potentially dangerous corporations (as well as the states they negotiate with). This will be especially true in the case of state-corporate crime, if as Day claims “governments have, in the end, little power when it comes to the operations of multinationals primarily in the developing world” (Day 2010).

## **Appendix A - Semi-Structured Interview Questions**

What is the state and city in which your organisation is located?

What is your position within the organisation?

How long has your organisation been in existence?

Does your organisation have a website or brochure available?

What are the key elements of your organisation's mission?

What projects are you currently working on?

Who decides what development projects to work on?

Approximately how many clients do you currently serve?

How do you assess or evaluate projects?

What are your primary funding sources? (international, domestic, government)

What percent of funds are allocated to direct development projects (not salaries)? What is the average project budget?

What systems, if any, does your organisation have in place to ensure that funding meets its intended recipients (that is, accounting, social audits, client evaluation)?

Have there been any internal or external audits of your organisation's financial information?

How many other NGO's operate in your current project areas?

Have any governments encouraged you to take a more active role in certain sectors?

If yes, do your activities substitute the government's work or compliment it?

What responsibilities have you been given that government would normally cover? Do you expect the government to eventually re-enter this area?

Has the government impeded your work?

What other problems have you faced during your activities? From which source?

What is the biggest problem currently facing INGO's in this topic area?

Do you have a legal department?

Do you have any legal officers?

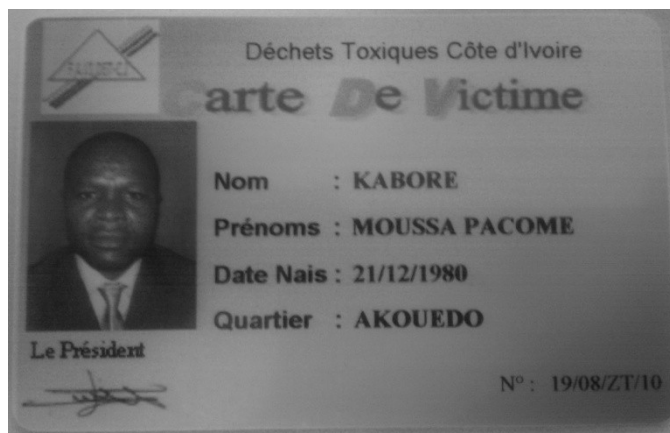
Have you ever considered legal action against a corporation?

Have you ever considered legal action against a government?

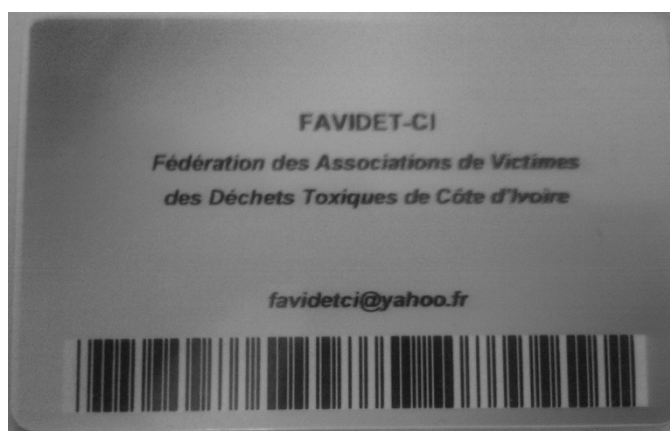
Have you ever considered criminal legal action against any person or body?

## Appendix B – Victim Card (issued by FAVIDET)

Front:



Reverse:



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